

MINUTES

ECONOMIC DEVELOPMENT (SUSTAINABILITY / AGRICULTURE / FOOD / ENERGY) & INTERGOVERNMENTAL RELATIONS COMMITTEE

August 5, 2013

A meeting of the Economic Development (Sustainability / Agriculture / Food / Energy) & Intergovernmental Relations Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Gary L. Hooser, Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Lihue, Kaua'i, on Wednesday, August 5, 2013, at 8:36 a.m., after which the following members answered the call of the roll:

Honorable Nadine K. Nakamura
Honorable Ross Kagawa
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura (*present at 8:38 a.m. to 5:30 p.m.*)
Honorable Gary L. Hooser
Honorable Tim Bynum, Ex-Officio Member
Honorable Jay Furfaro, Ex-Officio Member

There being no objections, the Committee recessed at 8:58 a.m.

The Committee was called back to order at 10:52 a.m., and proceeded on its agenda item as follows:

Bill No. 2491 A BILL FOR AN ORDINANCE TO AMEND THE KAUA'I COUNTY CODE 1987, AS AMENDED, BY ADDING A NEW ARTICLE 22 TO CHAPTER 22, RELATING TO PESTICIDES AND GENETICALLY MODIFIED ORGANISMS
[This item was deferred to September 9, 2013 at 9:00 a.m..]

Chair Hooser: I am sure other members are on their way and will be here shortly. We are going to take some public comment first and that comment is according to our Rules, we are allowed a certain number of comments from people in the beginning and then the rest of the public comment we will hold to the end of the meeting later today. We will take that in a second, then I am going to recess this Committee and the Committee of the Whole will be called into session and we will go into Executive Session. I am hopeful that it will be less than an hour myself, but the room will have to be cleared at that point and then we will come back in, and we will proceed with our meeting. The meeting will consist of primarily questions and answers from members of this Committee and the Council on various resource people that are here today, some of you are here and some of them are coming later. These would be questions regarding the law, questions regarding science and medical, and other questions that are relevant to Bill No. 2491. We will spend approximately two (2) hours or less on the legal and then we will spend another similar period on the medical science, then the plan is to recess for lunch, and then come back with more questions of various resource people who are here, and after that point we will take additional public testimony. It is custom here to do three (3) minutes testimony, but it is possible for the Committee or the Council to suspend its rules and reduce that time depending on how many people want to testify and how late the day is going to be. I will discuss this more

later, but our goal today would be to get out at 4:30 p.m. or so. If we are able to do that, it depends a lot on how many people are here to testify, how many questions the Councilmembers have, and what the will of the majority of the Committee desires. So, that is a brief overview and I am going to talk more about that in a little bit, but for now, I would like to suspend the rules and bring up the first speaker for three (3) minutes.

There being no objections, the rules were suspended to take public testimony.

Chair Hooser: Introduce yourself, please and you have three (3) minutes.

BRENT NORRIS: Aloha kākou Council, my name is Brent Norris and I am here today representing...

Mr. Furfaro: Excuse me Brent, before you start. Mr. Hooser, I want to remind everybody in our Rules and this Rule is 13(e), those that speak during this eighteen (18) minute time will not be called back in the later session and I did not hear that explanation.

Chair Hooser: I understand. Thank you very much, Chair. So, people who speak early cannot speak later. If this meeting goes and is continued, there is a chance we will not adjourn. We could recess and continue this meeting for a few days from now, a week from now. If we do that anyone who speaks today, that would be credited for the whole meeting. Thank you, please proceed.

Mr. Furfaro: Thank you, Mr. Hooser.

Mr. Norris: Thank you. Thank you all for allowing me the opportunity to speak. I have come over from Hawai'i Island where we have a similar Bill in legislation right now and the opportunity to learn about your process and what has been going on here has been extremely valuable. I really appreciate that. We do not have the same problems, but we are equally passionate and we hope that we can help. My personal connection to the 'āina compelled me to create a non-profit back in 2009 and I partnered with our County to create the Hawai'i Island Green Economy Report and part of what I had to do through that report was really to help understand what sustainability was and why it was important for a green economy. As we were looking to diversify agriculture as Governor Abercrombie has in his Food Security Plan, part of a seven (7) step action plan, we had to look at what that meant and what it meant to participate at that sustainability level. I personally moved into the forest to learn how to become self-sufficient and it was through the actions of what I caused myself to do, to learn how to care for myself with the basics. I bring that to you and what is widely known as the most common definition of sustainability, and that is from the Bruntland Commission, a result of World Trade Organization, Brent and Woods meeting in the early 1950s. Basically, to be sustainable means to meet the needs of the present without compromising the ability of future generations to meet their needs and that is really important. They typically look at three (3) aspects of that, environment, they look at social aspects, and then they look at economic aspects. This term sustainable agriculture/sustainable farming has been sort of bandied about very loosely in my opinion. Being sustainable, being self-sufficient requires a very limited set of external inputs. So, this is ideal if you envision a global model of sustainability for your island. For example, you would want a very limited number of external inputs for your agricultural systems. I am going to veer a little off topic just a bit to sort of dig into the sustainability definition a little more. In the case of

the environment it is imperative that you maintain your water supply. So, right now it has become acceptable to import ninety percent (90%) of the food, but I would implore you to consider what it means to input ninety percent (90%) of your water.

Chair Hooser: Excuse me, that is your three minutes (3), so you will have to summarize.

Mr. Norris: Great. In summary, I would just like to say that the companies that we are dealing with right now are not sustainability based companies. They are using the term sustainable to try and convince you that it is something that you need, but really what you need is to be self-sufficient to be sustainable. Thank you very much.

Chair Hooser: Thank you very much. Any questions? If not, thank you very much for your testimony.

Mr. Norris: *Mahalo.*

Chair Hooser: Yes.

Mr. Furfaro: Just a reminder during the eighteen (18) minutes there is no interaction with the Council. It is totally yours, Mr. Hooser.

Chair Hooser: In return for early testimony, there is no Q&A. This is an accommodation for the people who cannot be here later. I want to encourage all speakers to try your best to address the Bill and the more specific you can be on how we might improve the Bill or others would be appreciated. Go ahead, please.

DESIREE HOOVER: First of all, again I would like to thank everybody and again thank you for starting this Bill No. 2491. One of the subjects that is to be talked today is the impact of companies affected by Bill No. 2491. I do want to point out that first of all that this research, the Environmental Impact Statement (EIS) should have been done first before these companies were ever even brought over here on a controversial issue like we have. There may be consequences just because it should have been done first and after research, especially the safety and the health risks for the people and the environment, these pesticides and agriculture farms may not be a good fit for this small island and that could be one of the consequences. If that is the case, I wanted to let you know that there is an ongoing project lining up looking at other potential agriculture companies and maybe even other companies and industries to help replace that and to keep the island going. We know that the land itself might be ruined and again you have to think what can replace that? So, these are just potential, trying to get solutions because there are other solutions. I want to remind you that jobs should not be such a big factor because there are other less controversial solutions. I myself do want to testify that my partner does have asthma and has to be on a daily inhaler here. As soon as she leaves and even goes to O'ahu and will spend the week there, they have the vog, they have the humidity, and she does not have to be on respiratory and her asthma goes away, goes to the mainland and it goes away. As soon as she is here within the first day or two, she has to be on the inhaler and steroids that are not good for you. We live in the North Shore, so I want to let you know I think it is affecting the North Shore, whatever is around here is affecting the North Shore. I would like part of the research to have the North Shore included and when they do the volunteers to make sure that other people from other parts of the island are included as well. Again, I just want to thank you. I strongly urge

you to do Bill No. 2491 so we have a right to know and get some good solutions for our island. Thank you.

Chair Hooser:
please.

For the record, could you state your name,

Ms. Hoover:

Oh, I am so sorry. Desiree Hoover.

STEVE KAI: Good morning. My name is Steve Kai and I oppose Bill No. 2491. I would like for you folks to look at us that work for the seed companies as people, think of us as your neighbors who helps out with Aloha Ike fundraisers, think of us as parents who helps out with Gotcha Night at Kekaha School or help judge Senior Projects at Waimea High School, think of us as your son, your father, your mother, your grandfather, and I think you will see us as people who would not deliberately or carelessly poison our friends and families. Bill No. 2491 would have you believe that we work for large corporations and we would place profit over the safety and health of our families and neighbors, but there is nothing further from the truth. We work for corporations, but we are people with deep commitments to our communities and our families. As several had said in previous testimony, this Bill has divided and caused mistrust amongst ourselves, amongst our friends and neighbors. But I do believe that everybody in this room, we share some very common goals and we just need to sit together to recognize them and to begin to work towards them. I believe that you, the Council, holds the key to accomplishing this. So, let us develop an alternate Bill that will allow us to move towards moving all agriculture forward. Let us work on a Bill that allows organic farmers to work alongside the seed farmers and helps them resolve their issues rather than divide them. Let us work on a Bill that addresses the issue of food security. I believe we have these opportunities and if we actually sit down, we will find that we all do share the same dreams and aspirations. You have the opportunity to facilitate this unity instead of the divisiveness. So, I am asking that we actually step forward and start working on a Bill that will truly help Kaua'i work as a united community and focuses on moving all of our people forward. Thank you.

Chair Hooser:

Thank you very much for your testimony.

SUSAN TAI KANEKO: Aloha Council Chair, Council Vice Chair, Committee Chair Hooser, and Councilmembers. *Mahalo* for the opportunity to address you. My name is Susan Tai Kaneko for the record and I am here officially as a concerned citizen. For the record, I oppose Bill No. 2491. Plenty of other experts will be here to address the technical problems with the Bill, but I would like to address another serious problem stemming from Bill No. 2491. I am a new employee for only two (2) days at Syngenta on Kaua'i, but as many of you on the Council know that through the projects that I had the honor of working with the County on, I have spent nearly eight (8) years dedicated to our community as a former Small Business Development Center Director and a former Director of the Kaua'i Economic Development Plan. Prior to that, I spent over twelve (12) years in university sector in entrepreneurship in small business. Except for two (2) days, my career and heart has been dedicated to education, community building, and bringing people together to get things done. Our small island lacks the economy of scale that enable larger communities to thrive more easily. We have to work much harder and do much more with much less and that is why partnerships and collaboration are crucial for us. My concern is that Bill No. 2491 and its approach is devastating and fracturing our island, it is unraveling the fabric of our community. Bill No. 2491 in its technical weaknesses, has created fear and fear creates suspicion and suspicion is pitting neighbor against neighbor, one side of the island

against another, and strangers against strangers. Bill No. 2491 is fueling a fire that we cannot afford to run amok. People are insulting and verbally attacking one another, even threatening bodily harm and death to each other. People are using Bill No. 2491 as an excuse to no longer, unconditionally Aloha each other. Seeing our community falling apart, now is the time we *ha'a ha'a* ourselves and we must humbly say let us put aside our differences and work together. We cannot afford to keep digging in our heels and staying this the stalemate. There are many people here ready and willing to work together towards truth with mutual purpose and for real solutions. Bill No. 2491 is problematic and we have a lot of work ahead of us. Let us be open minded in our pursuit for knowledge, creative in our problem solving, and above all collaborative in our efforts. Let us not be prisoners to our past, but pioneers for our future. I am confident in you as our County Council to guide us through this process and bring this community back as one. *Mahalo*.

Chair Hooser:

Thank you very much, next speaker.

SARAH STYAN: Good morning and thank you for this opportunity to testify this morning. My name is Sarah Styan and I strongly oppose Bill No. 2491. I am very proud that I grew up on a farm in western Massachusetts and I had the privilege of being educated at three (3) agricultural universities, Cornell University, (inaudible) Agricultural University, and the University of Hawai'i at Manoa. I am also very proud I have been an employee of Dupont Pioneer for the last eleven (11) years and that Dupont Pioneer has been selling seed to farmers since 1926. I am very proud that my daughter was born at Kaua'i Veterans Memorial Hospital (KVMH) in 2003 and that I was actually working in the fields during my pregnancy with no concerns for my safety or the safety of my child. As a parent here on Kaua'i, there is no way that I would be able to work in a company that was in any way endangering not only our children, but any part of the community here on Kaua'i. I am very proud that I am a part of the seed industry here on Kaua'i and Hawai'i and of all my colleagues, not just whom I work with every day, but through the State of Hawai'i, people who are working every day to make a difference for farmers all around the world. I echo the comments of previous testifiers, that this Bill, Bill No. 2491 is truly dividing our island. You as Councilmembers, I urge you to lead an enlightened discussion and get information on the table, real information, and have a true dialogue where we can engage and come to solutions. We have so much positive in all of our island and we need to bring that together. We need to harness all of the great technical expertise that we have to truly come to a solution for this island where all our kids can move forward and see the value of science and technology as well as keeping our environment safe. I am very proud to work for a company whose core values are safety, environmental stewardship, respect for people, and highest ethical behavior. I can truly say that I feel all of my colleagues, not just in Dupont Pioneer, but all the companies feel very strongly about all of these core values. Thank you for this opportunity to testify.

Chair Hooser:
speaker?

Thank you very much. Is there another

LANCE ATKINS: Aloha Councilmembers, my name is Lance Atkins. In the last hearing, Councilwoman Yukimura did ask several people for any facts that they had regarding the findings of the Bill, so I wish to address a few of the findings in the first portion of the Bill. I will address them by the number in which they are designated in the Bill. Finding No. 2 addresses unregulated growth. Unregulated growth is an inaccurate term, we are heavily regulated as an industry. I will touch more on that in a little bit. Finding No. 6 mentions devastating economic impacts from pollen drift. I have a difficult time in thinking of a single

way in which this statement could be true, on the contrary we have contributed much to the economy of Kaua'i. However, all fields regulated or unregulated have had extreme isolation distances that we work with. Corn only pollinates corn and the idea that pollen drift could somehow devastate the economy on Kaua'i seems impossible to me. Finding No. 9, pesticide laden dust and drift is suggested to be inevitable in Finding No. 9. I do not believe this to be true. It is not inevitable. This ignores all modern technology and safety measures which are already in place. I will touch on that in a second as well. Finding No. 12, along with many other areas of the Bill, Finding No. 12 takes the assumption that pesticide applications are inevitably dangerous. This is simply not true. Before pesticide ever reaches approval it undergoes an extensive process to evaluate health effects, both to humans, animals, and the environment. Labels then prescribe exact methods of use to ensure safety of the product. Thereof, any use of the product as prescribed by label can and should be considered safe use. Pesticides are like medicine that we take for ourselves, when taken in a safe manner can and should be considered safe. These pesticides are however medicine for the plants. Finding No. 13 addresses the Right to Know. The use of the term Right to Know is a brilliant political move to convince reasonable people that this Bill is necessary. After all, as Americans we love rights and at first glance it makes sense that we have a right to know. I want to make clear that I speak on behalf of myself and not behalf of Syngenta in this case. However, I do wish to say that we do not necessarily have a right know all proprietary business practices that a company uses. I personally love teri fried chicken from the Imu Hut, however, I do not have the right to know what their recipe is that they use on their teri fried chicken. Lucky for us though, they are actually food safety and sanitation laws in place that help me feel safe eating their products. Inspectors check their kitchens to make sure that their cooking and cleaning practices are up to code, ensuring the safety of all customers. That is what we have going on at our farms. I am no expert in the restaurant business, but I would think that we are every bit as regulated as restaurants. Every chemical we use comes with a legal document attached to it which has been approved and reviewed by the Environmental Protection Agency (EPA). A State inspector regularly inspects licensed applicators, records, and fields to ensure proper use, application, and documentation of chemicals. All Genetically Modified Organisms (GMO) fields are planted in permitted areas...

Chair Hooser: That is your three (3) minutes, if you could close.

Mr. Atkins: I would like to assure you that we are safe. We are heavily regulated. I also have several documents here that state some of the clean water, clean air, and low cancer rate that we have on Kaua'i and in Hawai'i which I would like to submit to the Council. I could submit it at a later time though. Thank you.

Chair Hooser: Thank you very much. I believe that concludes our early testimony. The Committee is going to recess and turn it over to the Committee of the Whole.

There being no objections, the Committee recessed at 8:58 a.m.

There being no objections, the Committee reconvened at 10:52 a.m., and proceeded as follows:

Chair Hooser: I appreciate the patience of everybody here. All members are present and Mr. Rapozo, I am sure is on his way. I am going to go over again, a little bit of the format and then we are going to go ahead and start.

Each of us is going to make opening remarks, five (5) minutes. I will start, followed by Mr. Kagawa and each member who wants to offer remarks, can. Then we will go into the question and answer period. Each member will be given ten (10) minutes uninterrupted with no follow-up from anyone. The member will ask ten (10) minutes of questions to whomever they want on the law, we will talk about law first and we will go person to person. Then there will be a second round if anybody wants additional questions and you can hold you follow-up until it is your time. After we finish the legal, we will go to science and medical and other questions. So, that will be the format and we will decide. Our goal again, is to finish the meeting I believe it was at 4:30 p.m. if possible depending on how much public testimony and how many questions are asked. So, that is the format. I will go ahead and offer some very, very brief remarks. My five (5) minutes can start. Is somebody timing us here? It goes without saying the importance of this issue to our community. We have never had a public hearing with as many people as we had the other night. We never had as much testimony as we had. Clearly without question, this is a critical, important meeting subject to everybody and it is unfortunate that it has come to a job versus health issue and I do not see it like that. I can tell everybody here that is concerned about their job, this Bill is drafted with Councilmember Bynum's help over many, many months and it was drafted specifically not to impact the industry that would create any kind of significant disruption whatsoever and that remains my goal today and I think it remains the goal of every Councilmember. At the end of the day, we pass something that increases protections for health and the environment and has minimal disruptions on the industry, that was my goal what I started, that is my goal today, and I think that goal is shared by everyone. We can talk about specifics of the Bill, which we will, at length. But that is the goal, that is the outcome. We could not do otherwise. We would not have the votes to do otherwise and we could not legally do otherwise. We have to work within our legal parameters, but there are issues. Those on both sides have exaggerated and misled people. There are valid health, medical, and scientific issues. We have doctors, we have almost every pediatrician in the County of Kaua'i saying they support this Bill, I am concerned. We have Obstetricians, Pediatricians, and others, Oncologist, from KVMH and from Wilcox Memorial Hospital saying I am concerned. I do not have a study, I do not have the research but I talked to other doctors and there are more health problems on the West Side than others. There are serious concerns from medical professionals. We have reports from the American Cancer Institute and we have reports from the American Academy of Pediatricians so we cannot avoid that there are issues. There are serious health issues and we need to address those. We have Dr. Bal, the District Health Officer for the County of Kaua'i testifying on his own behalf supporting this Bill. We have Dr. Lorrin Pang, the District Health Officer of Maui on his own behalf supporting this Bill. The medical community is clear. There are issues, this Bill is a good Bill, and it needs to be supported. Please, this is not about taking jobs away or closing people down. This is a reasonable request for disclosure. I have asked the industry over and over again, tell me what you are spraying, what is your doing and they are not telling me. It is about you buffer zones next to schools. It is about reasonable protections. An outside disparate person would look at this Bill and say this is reasonable, this is more than reasonable. I ask that you bear with us and that you help the Council, help us by industry pointing out specifically what things are of negative impact. That is the only way we can fix it and those of you in the community know that our hearts are in the right position. We would not do anything that is going to put you out of business or jeopardize your job. Not to say that the buffer zones are not necessary around schools, hospitals, and key areas or that disclosure is not necessary or that we need to do our research whether it is an EIS or something else. Those are prudent measures that on behalf of the Council, of the government we owe it. We have the obligation to protect those interests. Please, give us some faith that we want to do the right thing, support us in this effort, and we are going to

proceed with as many other meetings before we make decisions in my opinion. But thank you all for coming. I will let Councilmember Kagawa speak next. Thank you very much.

Mr. Kagawa: Thank you, Chair Hooser. I want to first thank the public for expressing your views on this item. To come into a new venture like this for me on the County Council and to have such a huge issue is a wonderful welcome and I feel very loved by all. This is a State and Federal government responsibility to oversee the agriculture industry. The Department of Health, like he said. Why can the State Department of Health not talk to the State Department of Agriculture? Instead they have to come to the Kaua'i County Council with their concerns? I mean, it makes sense that if you have a health concern, a serious health concern, and you rent the State Department of Health would you not talk to the State Department of Agriculture and tell them "Hey, I have these concerns? Can you help us? Can you help us to determine if it is fact or if it is accusations?" Governor Abercrombie stated in the paper, we interviewed him, the Garden Island, and in the paper he said while he has his own personal feelings about GMOs, he is waiting for more facts and evidence before he says what he truly feels. As the Chief Executive Officer he oversees the whole State and he has not made that conclusion. He oversees the State Department of Health, the Department of Agriculture, convince him. You folks have facts or evidence, convince him. Mazie Hirono, our Senator, she came down in February I believe. Mr. Bynum and Mr. Rapozo were both present at the Hawai'i Government Employees Association (HGEA) Office and she asked us for what are our concerns and I brought up the question. I think I shook up the whole office there. I said GMO issue is a hot topic here. What is your stance? You need to take a side on this thing and at that office she said I am still waiting for more facts and evidence. Yes, I mean, all of the people that represent Kaua'i that oversee those areas, agriculture, health and safety, pesticide use, they are our Kaua'i representatives and they are waiting for more facts and evidence. We say here that we have a lot of facts, we have a lot of evidence, well, if there is so glaring we need to convince our State and Federal representatives. We hear that they are all corrupt? I am sorry, I do not agree that they are all corrupt. I think if it comes to protecting people's health, they will do the right thing and safety, but I think it is a very complicated issue. We are trying to get educated on it in a few months. I think it takes years to become an expert in that area. Like I said, for those who do not know, I have grown up all of my life on the West Side of Kaua'i, born and raised here, forty-seven (47) years. I lived two (2) houses away from a sugarcane field until it turned into the Cliffside Subdivision in Hanapēpē Heights. My dad died of cancer at the age of fifty (50) but he was a heavy smoker. Did he die because of the pesticides from the sugarcane or did he die because he smoked a lot of cigarettes? I cannot factually say he died of either. My mom still lives there and the seed company is just a little bit to the west of that. Do I care about people of Kaua'i? Sure. My own family and friends come from the West Side. Why do you think during the election, a lot of people said how did you win, this newcomer? It is because I have a lot of friends and family from the West Side that I finished No. 1 in Kekaha through Hanapēpē, home of the seed company by a resounding margin. On the East Side I did not do too well, but people do not know me too well. But it is a thing that I do care about, the impact. I hear testimony on both sides. I have friends on both sides of the issue that have testified. But it is just that do I want the County to oversee something that is already regulated and do I think the County can step into that area and do a better job than the Feds and the State? I think we have a hard enough time taking care of our responsibilities and with that I will summarize by thanking members for standing strong. I think we will do the right thing in the end and protect this County. Thank you.

Chair Hooser:
Councilmember Rapozo.

Thank you, Councilmember Kagawa.

Mr. Rapozo: Thank you, Mr. Chair. I really did not have any prepared statement, but after hearing from Mr. Hooser and Mr. Kagawa, we will do the right thing at the end for some of you and for some of you maybe not so. I do not remember a more divisive issue on this island, Super-ferry and GMO taro, I think those were all pretty significant. But as far as the emotions running with this issue, I have never seen anything like it. I am assuming that the other Councilmembers get the same two hundred (200), three hundred (300), or four hundred (400) E-mails a day and the phone calls. Some of them not very pleasant and some of them do not know who I am, accusing me of selling out and that is not needed here. I think Mr. Kagawa said it best, to expect this Council to understand this issue in a month or two (2) or three (3) is really not reasonable because we have the task of sorting out all the testimony, we have the task of sorting out through all of the emotions and getting to the facts and the studies. I think Mr. Kagawa brings up a good points about his father who passed away. I have asthma as a young child. My son and my daughter both had asthma. We live nowhere near the fields, but my asthma was attributed to, believe it or not, flowering plants and mock orange. That is what mine was, that is scientific. The doctors figured it out through a series of shots. There was no indication that my asthma, my son's asthma, and my daughter's asthma came from anything outside of that. But what we hear today, and that is what I think part of what we have to sift through is when we have a lot of experts because everybody is an expert in their field whether it is a doctor, a lawyer, a farmer, they are all experts in their field. But when I hear the doctors come up and the nurses come up and they say there is this outrageous number of cases on the West Side and we do not know what the causes are. I mean we do not know. I am interested in finding out what those causes are. Is it the smoking? Is it the flowering plants? Is it alcohol? Is it an allergy to something else or is it in fact, the pesticide use? We have to go through all the testimonies and believe it or not, we actually, I am assuming everybody here reads them. But at the end of the day, we have got to come up with a Bill, we have got to come up with a resolution that does what we need to get done, number 1 because that is what should be driving this ship and not emotions. It should be what is the end result? JoAnn will always say what is the end in mind? What is that? We want to make it safe and we want to do it in a way that it is going to happen, it is going to work because the law itself we have laws on the books, you all know. I am not go into the other issues that this island faces, that we have laws but it does not get enforced. It does not serve any purpose except to say that we have a law, but the end result has not been achieved. How do we get to the end result is what I am interested? We have red shirts, blue shirts and if you follow Facebook like I do, there are some nasty things back and forth and we do not need to do that. We are not going to get to the resolution that way. I guess my point is that if we continue on this path, at the end of the day we are going to have the reds and the blues upset with each other regardless of what happens, versus a process which I think this body could facilitate, to get everybody on the table so that the issues can be addressed and I am saying this right now, seed companies you folks have to step it up as well and somehow get the community to feel safe. It has to be done. This issue has become a GMO issue which it is not a GMO issue. It is a pesticide issue, but it is being used as the vehicle to carry the GMO issue and that is where I think we have to separate the two and deal with what is really happening on the West Side. That is what we have to deal with. Believe me, we are getting inundated with testimony from the mainland, I got one from – we all did, it is from all over the world. Let us just say that we are getting E-mails from all over the world about banning GMOs. It is not a banning GMO Bill. It is a pesticide Bill. I think we are losing the direction and the focus of what I think the original intent of the authors to deal with the safety of the West Side

people. I only hope as we go through today and today, let us set the tone today to all strive to get to the end result of making this a safer place. The emotional testimony, believe me, is very compelling. But I want to make sure that collectively we get to the point we need to be. Thank you.

Chair Hooser: Thank you, Councilmember Rapozo.
Councilmember Nakamura, did you have remarks?

Ms. Nakamura: I would just like to echo everything that Mel said and I do not have any remarks at this time.

Chair Hooser: Councilmember Yukimura.

Ms. Yukimura: Thank you. I support and agree with the intention of Bill No. 2491, which as I see it is to inform and protect the public and the natural environment. I do not think there is a single person on Kaua'i who does not share that goal. However, we know that good intentions are just a start and without effective action in this case, without effective provisions in the law that stand up in court, we will get nowhere. The law needs to be designed and written in such a way that it achieves its purpose and does not cause significant, unintended consequences that harm individuals or organizations unjustly. Councilmember Hooser says that this Bill was not meant to shut down the seed companies. If you take out the seed companies, Kaua'i Coffee which is not a seed company, has said that the setbacks as proposed will cut their acreage in half from three thousand (3,000) acres to one thousand five hundred (1,500) acres, that could shut down a company. So, we have to really look at what the impacts of this Bill are. I am still going through two thousand (2,000) plus E-mails and written and oral testimonies that have been submitted including attachments and links. I want to thank each person who has offered your thoughts and information. I have learned a lot from you and I am proud of all of you who have spoken up and taken personal responsibility for your community and for your life. There is just a lot more to learn because this is a very complex Bill with multiple facets each of which requires good understanding to be able to create an effective law. I am still in a learning mode and I think this Committee Meeting is designed for that since we have both experts and other public testimony. I expect a form of the Bill to pass, I said that at first reading. But I think there is still a lot of work to do. I just have one request to everyone and that is to please exercise real *aloha* here because there is a huge amount of intimidation going on. Over the weekend I spoke to a lot of small farmers in this community, some of whom are not even dealing with GMO. But they have taken a position on this Bill as is their right to and they have gotten inexcusable Facebook and yelp and other kinds of false information. I want to cite my friend Johnny Cardenas who has taken a position against Bill No. 2491 and there is all kinds of falsehoods about how he is using sprays on his tropicals which is not even food and it is not true either. He is not using it and yet another small farmer who is well respected in this community will not even come and speak. I said you have to come and speak and that person said I cannot because they will target me and my farm and that is not what a democracy is about. That is not what this community is about. It is happening on both sides, but please. My friend Laura Thompson teaches the Aloha Peace Project in the school. It is an anti-bullying curriculum and there is a component in it about the caring majority. So, it you see a bullying happening, what do bystanders do? They do not just turn away. There is a caring majority here that stands up and says this is not how we do things in your community. I am calling on all of you, not only to watch your own behavior, but to speak out and remind others because I think if we can do away with this kind of behavior and come together and listen to each other, we can find a

solution that will work for everyone, is my belief. But it is going to take really hard work. Thank you.

Chair Hooser: Thank you, Councilmember. You have heard from the Committee members, two (2) non-Committee members, Councilmember Bynum and Council Chair Furfaro will be participating in the discussion today too, but officially they are not members of Committee. But usually the way we work around here is everyone is involved. Councilmember Bynum.

Mr. Bynum: Thank you. This is the first time we actually started to get talking about the specifics of this. Under the Sunshine Law so far what we have been doing is receiving information. I want to start by saying there is this international debate about the safety of GMO foods. That is not what this Bill is about and any discussion about that issue is corollary and really not appropriate because this Bill does not have any findings about the GMO safety of food. What I want to say is – well, let me get through this quick and go through fast mode. About ten (10) years ago, I met two (2) remarkable women our community. I think they are both in the room today, one of them is Jeri DePietro from GMO Free Hawai'i and the other is Cindy Goldstein from Pioneer. I respect both of these women a lot. I have learned a lot from both women and they have a lot in common even though they are on different sides of this issue. What they have in common is that they both came to me eight (8) or ten (10) years ago and said, "Tim, please get yourself educated about these issues." They both said that there is a lot of misinformation on the other side, so please get educated because this is a really important thing for the County of Kaua'i. I have spent the last ten (10) years doing that and I want to tell people on Kaua'i from the bottom of my heart, there have been major changes on this island in the last ten (10) years. Many of you may not be aware that are a cause for serious concern. These issues we are going to come to a head whether there was this Bill or not. What are those changes? Most of this goes down to one key issue for me, we are a farm community. We always have supported farming. We have tax laws that incentivize farming. We have a proud history of farming. All of the farming that was happening on Kaua'i, and I believe all of our laws, assumed agricultural production of a commodity, commerce happening. Commerce is the selling of products. All of the agriculture that we are familiar with, the agriculture that we support is agricultural production agriculture. We are used to it. In our Right to Farm Bill in State of Hawai'i says hey, you move next door to a farm, there is going to be some nuisances that you have to tolerate. We are going to have a special dissension for farming because it is so important to our commerce, our community, and our agriculture. I want to tell you that what the seed companies are doing on Kaua'i is not agricultural production practices. It is agricultural research practices which are entirely different. Now, I have been moved by all of the testimony. I was moved by the workers in the field that say they put safety first, that they have a very meticulous employer who focuses on safety and I do not doubt that for one second because the people running the agricultural research practices on Kaua'i are scientists and they are very meticulous. They keep very meticulous records and I am certain that they put safety first even more so than production agricultural practices. But it is research agricultural practices that are happening here. Well, what does that mean? First of all, it means that they are not producing a product. There is no product that gets sold from these companies, therefore the government gets no revenue. When Kaua'i Coffee sells coffee, they are involved in agricultural production practices which means when they sell their product, it generates General Excise (GE) revenue for the State. It involves commerce and our community. I am going to have to go really quick because that is not what the seed companies are doing here, right? If you are in production agriculture and those who have lived here for many years know that there is pesticide spraying in the process of production, that pesticide spraying I

have talked to a bunch of farmers including seed companies for typical corn production would be eight (8) to ten (10) exposures to pesticide over a ten (10) month growing cycle. What if I told you that the agricultural research practices on Kaua'i has spraying happening at twice that frequency? What if I said it was three (3) times that frequency and not ten (10) times a year, but thirty (30) times a year? That is totally different than spraying eight (8) or ten (10) times and being exposed with six (6) weeks in between sprayings. What if I told you on Kaua'i they are spraying two hundred forty (240) days out of the year? There is no agricultural research practice in the world that does that. This is totally different. The other thing people on Kaua'i need to know is that for all of our support for diversified agriculture and bringing agriculture products, we are kicking agriculture producers, Kama'aina agriculture producers off the land in favor of the seed companies who are not producing anything for us to eat and they are not even paying appropriate taxes so our taxpayers are subsidizing. I have run out of time. I have ten (10) more issues I would love to discuss. This is the most important Bill that has ever been before Kaua'i and please engage in the process.

Chair Hooser:
Chair Furfaro.

Thank you, Councilmember Bynum. Council

Mr. Furfaro: Thank you, Committee Chair Hooser and thank you for being here today and for our open public hearing. I want to first say to my colleagues here on the table, you should all know that we are pretty united in purpose here to have this discussion, that is the first thing that shows about our stewardship of our island. To have this discussion in a very meaningful dialogue to hear all of the points of view. As well I think my colleagues are quite capable of skillfully negotiating with both internal customers like other government agencies and people who advise us on what the political subdivision of Kaua'i stands for and what authority we have. First of all, I want to thank them all for participating in a very meaningful discussion. This topic is very stress laden for our entire community and I hope we take it in the spirit that the conversation will lead to a good outcome wherever it goes. But I also ask that you recognize the courage we have to have this discussion, but you also practice *ho'omanawanui*, have the patience to let us here all of the point of views. It is extremely important. I drive home and my family's *kuleana* is down in Kalihiwai and I see a sign with my name on it and it tells me how I should vote. Well, I see myself as an exceptional steward of the place and I do it for my children and I do it for my *mo'opuna*, so let us all do it really skillfully. Let us have an open dialogue and know there are restrictions with the political subdivision of Kaua'i can do. But let us hear all points of view. Let us do it *kina'ole*, without flaw. Let us not hear about issues out in the community where communities turning against one another. That is not Kaua'i. That is not Kaua'i. We do things different and better here. My *kōko'olua*, my sidekicks, my nieces, my nephews, they are all sharing with me their opinions. But I do want to let you know that Mr. Hooser is going to lead us through this. Whatever comes about, let us do it respectfully. *Mahalo*, thank you.

Chair Hooser:
stated on the agenda?

Would the Clerk please read the Bill as

Bill No. 2491 A BILL FOR AN ORDINANCE TO AMEND THE KAUAI
COUNTY CODE 1987, AS AMENDED, BY ADDING A NEW
ARTICLE 22 TO CHAPTER 22, RELATING TO PESTICIDES
AND GENETICALLY MODIFIED ORGANISMS

Chair Hooser: Thank you. I think the process is to suspend
the rules and bring speakers up. The first speakers are going to be speaking about

legal issues and I think there are three (3) individuals here, Mr. Achitoff from Earthjustice, you want to move forward? It will be a question and answer, it will not be a presentation. Mr. Alston, if you would like to come up. Then members will direct their questions to whoever they want to direct them to. Mr. Hoshibata, is he here? If you could come up. Some of you may not get questions and some may. But it will depend on the members. We are going to go one member at a time, there will be two (2) rounds of ten (10) minutes apiece, and there will be a timer. Mr. Kagawa will start the process. Anyone you would like. If you could just briefly introduce yourself and who you are.

There being no objections, the rules were suspended.

PAUL ACHITOFF: *Aloha*, I am Paul Achitoff.

Chair Hooser: If you could speak up too. We get comments from people watching it online that they cannot hear what we are saying.

Ms. Yukimura: Also from behind the room.

Mr. Achitoff: I am Paul Achitoff and I am an Attorney with Earthjustice.

PAUL ALSTON: Good morning, I am Paul Alston from the law firm Alston Hunt Floyd & Ing. I represent Syngenta.

JOHN HOSHIBATA: Good morning, my name is John Hoshibata and I represent Pioneer from the law firm of Bronster Hoshibata.

Chair Hooser: Thank you gentlemen, for coming. You all flew over today just for this, I am guessing. So, thank you very much. Mr. Kagawa, did you have questions?

Mr. Kagawa: I will pass for now.

Chair Hooser: The ten (10) minutes is not something that we can hold in arrears. You get your second ten (10) minutes, but we are going to do one pass.

Mr. Kagawa: Okay, I will go ahead.

Chair Hooser: I appreciate it just because so many members have questions and we are trying to get through, so we have some rules today. Go ahead.

Mr. Kagawa: This question is for Mr. Alston and Mr. Hoshibata I guess first. If this Bill passes as-is, is it a possibility that you are going to file a lawsuit because of preemptive right to farm, etcetera?

Mr. Alston: I think you should take that as a given, yes.

Mr. Kagawa: Is there any case law on the mainland that you know of where you have been unsuccessful?

Mr. Alston: I think both Mr. Hoshibata and I agree as do most lawyers across the mainland for the companies that there is case law which

demonstrates that the County simply cannot pursue the type of regulation that is contemplated in Bill No. 2491 as it is presently written.

Mr. Hoshibata: I would add that there are lawsuits and there are results going both ways depending on the facts and circumstances. But I also agree with Mr. Alston that you do have this framework of regulations which has been referred to already on the Federal and on the State level which do preempt certain County actions. In this case, in what this County is attempting to do with pesticides. I do not mean that in any bad way or negative way, but the way it is setup is that there are Federal statutes, Federal agencies, Federal people, State agencies, State people who are doing this work that this Bill seeks to accomplish.

Mr. Kagawa: I guess Mr. Achitoff, if you have any comment whether we have any case law based on any other County municipality that has a Bill similar to this that I guess challenges the preempt law?

Mr. Achitoff: Councilmember Kagawa, I would first want to say that when we talk about this Bill and the provisions of this Bill and whether or not any aspects of it may be preempted, we have to be very specific. We cannot just say this Bill is preempted or this Bill is not preempted, that is meaningful. This Bill contains a lot of different provisions that have a lot of different effects and I think you have to look at them individually. Then as to whether any particular aspect of it is or is not preempted, that is a very specific analysis. For example, if you want to say are there aspects of this Bill that are preempted by Federal law, aside from asking well which provision are we talking about, I would say which Federal law are you talking about if you say this is preempted by Federal law? Well, the major Federal pesticide law is Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Supreme Court decided thirty (30) years ago in a challenge called Wisconsin Public Intervenor vs. Mortier, – I am sorry, that was about twenty (20) years ago, that the Counties do have the right to enact Ordinance that restrict pesticide use. It was a, I think, an analogous situation where a County said if you want to be able to spray pesticides you need to come to us for a permit, we have the right to regulate, and so forth.

Mr. Kagawa: Which County was that?

Mr. Achitoff: This was a County in Wisconsin. The person went and asked for the County for a permit to aerially spray his property, the County said no and he challenged it. It went all the way up to the United States Supreme Court in which he said this is preempted by FIFRA, the County cannot do this. The Supreme Court said, “No, you are wrong.” They said that FIFRA is not a statute that generally other than for labeling requirements and packaging requirements. FIFRA does not have a comprehensive statutory scheme that preempts local Ordinances and in fact it simply does not purport to do that. I would add that at that time former Attorney General Warren Price on behalf of the WAHAD Administration submitted an amicus brief to the Supreme Court forcefully arguing that in fact FIFRA does not preempt and he was right.

Chair Hooser: Was that five (5)?

Mr. Achitoff: Well, that is the United States Supreme Court so that takes care of the whole issue for the whole Country.

Mr. Kagawa: Are you familiar with House Bill 673, it just passed this past session at the Hawai'i State Legislature, Act 105 regarding pesticide use and posting online?

Mr. Achitoff: Yes.

Mr. Kagawa: Does that take care of some of what our Bill is asking for?

Mr. Achitoff: When you say "take care of it," does it address the same concerns? Does it preempt?

Mr. Kagawa: Yes. I mean, why would the County do the same thing that the State is already doing when they manage pesticide use?

Mr. Achitoff: Well, I think the question as I hear it is, to the extent that the State is in fact requiring exactly the same thing, then I do not know the need for having two (2) Bills that do exactly the same thing. To the extent that the County wants to do something that the State law does not require, the question is does the State law preempt the County from doing that and I would say no.

Mr. Kagawa: No, I am not on preemptive on that. I am just saying does that Bill satisfy the reporting right to know what is being used? It says, "the Department shall publish on its website all reports received by the Department regarding Restricted-Use Pesticides (RUP) in the State."

Mr. Achitoff: Well the question is, as I read the County Bill there is a little more information than that that is being requested.

Mr. Kagawa: So, there is a difference.

Mr. Achitoff: There is a difference, yes.

Mr. Kagawa: The other...

Mr. Achitoff: The County, as I understand it, also would like certain information to be made public that may not be public under the State law.

Mr. Kagawa: Well, I know what you are saying is that we can do it, you have a good feeling from your experience with Earthjustice. But the County of Kaua'i, we do not have a pot of gold to be the first one to really challenge the laws and go through a long Court battle and put our taxpayers on the hook. I think what I really want is that if we have strong arguments why do not we just present them to the State Department of Agriculture, to the State Department of Health, to the EPA, to our congressional delegation, or to our Governor? We already have a Bill in place here that allows the State Department of Agriculture to post online the right to know what Restricted-Use Pesticides are being used, all reports it says, all reports received by the Department.

Mr. Achitoff: It does not say what reports are required, does it?

Mr. Kagawa: I guess, all reports may not be the same reports that are intended by the authors of this Bill, but there is a start there that just passed this session. I know it is kind of difficult right now. It has only been a month since July 1st when it became a law. I know it is hard to say in a month how successful that has been.

Mr. Achitoff: Well, I would also point out that the State legislation allows the companies to decide for themselves what are trade secrets and the public is never going to see that unless the industry has a long history of calling everything that they do not want the public to know a trade secret.

Mr. Kagawa: I understand. That is what I was really looking for is that answer, actually, that could be a reason. I am good for now. Thank you.

Chair Hooser: Thank you, Councilmember Kagawa.
Councilmember Rapozo.

Mr. Rapozo: Thank you. This is pretty awkward situation. It is like having the trial before the trial is kind of how I feel. Having both sides of Attorneys here and our County Attorney not and yet our Attorney is our County Attorney and not any of you. So, this is pretty bizarre and I do not think it is ever been done, but I appreciate this and I appreciate your folks' willingness to be here and testify. I just really do want to follow-up on Mr. Kagawa's question about the proprietary or what you call trade secret information. The State's statute state that the company can determine what is proprietary. How would the County, and this question is for all of you, how would the County be able to mandate that they turn over trade secrets? We can start with you.

Mr. Achitoff: I will cite another case. This one actually was about thirty (30) years ago in which Monsanto sued and this also went up to the U.S. Supreme Court. The EPA at that time was requiring certain information that included what Monsanto considered to be trade secrets and EPA passed regulations saying if you want to register your pesticides under FIFRA, you must provide the following information and we may in fact, we likely will disclose this information to the public. Monsanto said you cannot do that, that is going to be a taking of our intellectual property because these are trade secrets. The Supreme Court said in that case, "Monsanto, you are wrong." To the extent that the EPA has told you in advance here is what you are going to be required to do and this is the price you pay for doing business. You can decide whether or not you want to do business and if you do not want to, well you can sell your products overseas where the laws may be different. But if you want to register your pesticide in the United States, you know in advance that this is what is going to happen to the information that is being asked of you. There are no secrets here in the sense that you are not going to be surprised that the public is going to find out. If you do not want to do it, do not do it, but the EPA can require you to do it as a condition.

Mr. Rapozo: What was the Court's ruling?

Mr. Achitoff: The Court's ruling was that the EPA could in fact, make this requirement and it did not constitute a taking of Monsanto's property.

Mr. Rapozo: And that would, in your opinion, be sufficient for this County to require because I do not know.

Mr. Achitoff: Well, I think you would have to look more specifically at the Ordinance and what its effect would be and the type of information that we are talking about and so forth. I think as a general principle, the County can require information like that, trade secrets, as a condition of doing business in Kaua'i. However, you do want to look at whether the information that

is being requested, the trade secrets in particular, how closely related is that to public health? Is it something that bears a close relationship or can you protect public health adequately without requiring disclosure of certain trade secrets? I think that is an important principle.

Mr. Rapozo: I understand it is very difficult to get legal opinions, if you will, in a ten (10) minute period. I am just trying to better understand some of the arguments. I will ask another question and then if you could cover both topics in your response. The issue here, I know a lot of the issue is about FIFRA and I think it is pretty clear that FIFRA does not preempt. For me anyway, that it not the question.

Ms. Yukimura: Mel, explain FIFRA.

Chair Hooser: Councilmember Rapozo has the floor.

Mr. Rapozo: The Federal Pesticide Act. I do not know what it is, FIFRA is how I know it and I apologize. What is FIFRA somebody?

Mr. Achitoff: Federal Insecticide, Fungicide, and Rodenticide Act

Mr. Rapozo: Oh, JoAnn, you always do that to me. Anyway, for me, I am clear that FIFRA does not preempt this County. I am clear on that. I think we all are and I am hoping that we all are, but it is not the FIFRA that I am talking about, I am talking about the State. The State preemption is my bigger concern. Again, this is an awkward situation because we have just come out Executive Session which we are not allowed to discuss, but I am curious to hear from – and we can start with you Mr. Alston, on the FIFRA issue. I know that we have probably five (5) left or less maybe on the State level preemption.

Mr. Kagawa: That is five (5).

Mr. Rapozo: Right on target. I still have five (5) more?

Chair Hooser: Yes.

Mr. Rapozo: If you want to just touch on the State preemption and then maybe start your response.

Mr. Alston: Let me talk about Act 105 because that was a hotly debated issue before the Legislature of this last session. If the Legislature had done nothing, then you would look at a situation where there is no a situation State policy regarding disclosure and reporting of pesticide use. But the State has now said, "This is the regime that we are going to adopt for the State. We are going to give some protection to trade secret information, we are going to require that other information be reported and by made publicly available. For the County now to say we do not like that State policy, we want to do something more, is to fly in the face of the work that the legislature has done to set the Statewide scheme for this area. I think that the fatal flaw in Mr. Achitoff's argument is that the State has weighed in here, has said what is to be disclosed and how, and what can be kept private and how. It has set up a scheme where the Department is supposed to prepare forms which are still to my knowledge, not been completed. The best thing that you could do is stand back and see what is done with the State's scheme, see whether the reporting that follows under the State system is adequate for your needs and for the needs of the community and either re-visit the issue after we have

some experience under our belts with that system or go back to the Legislature through your Legislators and say this is not working for us, you should do more, and urge them to do it. But this is not a situation where the law permits sort of a free-for-all with everybody decides that they want more or something different than what the State has chosen.

Mr. Hoshibata: I would agree with that. In this case the State has spoken. The State is all of us, it is not just O'ahu or Kaua'i or Moloka'i. The State includes Kaua'i. The State has chosen to do and enact what it believes is best for everyone and for any entity whether it be here in Kaua'i or whether it be in Lāna'i, to say, no, we are going to try something different. We are going to totally disregard what the State has done after all of their work and all of their research is not allowed, it is preempted and it is precluded. I think with respect to a practical way of looking at this, I do think that what Paul has said is right. Is that if in going forward there are problems that occur, that you see, that anybody else sees, that needs attention and needs remedial action then that is the way to go. That is the way to go, not create a third layer of regulations and possible bureaucracy that I think is going to muddy the waters.

Mr. Achitoff: Well, what my colleagues just said has very little to do with preemption of law. It has to do with what the Council might be well-advised to do. But as to whether the Council is entitled to do something other than that, that is a matter ever of what the law requires in terms of preemption. The State has certainly not said this is how we want uniformly and exclusively throughout the State of Hawai'i notification of pesticide use to occur. If they said that clearly and said we do not want any of the Counties to get involved in this, I would agree with what they said. They did not say that. They said here is what you are required to do under State law, that is all they said. I want to make one thing clear here about preemption under State law. After that case, that Wisconsin case about FIFRA that I mentioned that happened decades ago, the chemical lobby went all around the Country and lobbied to get express pesticide preemption laws integrated and pesticide preemption laws into State law. They have succeeded in about forty-one (41) States. Hawai'i is not one of those States. If you go to one of these forty-one (41) States, you will see language in their State law that says very specifically, no city, town, or County, may adopt any Ordinance that restricts or in any way regulates pesticide use in these ways including notification and all of these other things, basically what is happening here is Hawai'i does not have that language. But the industry is trying to say that that preemption exists anyway even though that the legislature has never done that.

Mr. Hooser: Thank you very much.

Mr. Rapozo: I apologize. I am done.

Mr. Hooser: If you want to wrap up.

Mr. Rapozo: That was my ten (10) minutes.

Chair Hooser: Thank you very much. Councilmember Nakamura.

Ms. Nakamura: Thank you. I have asked for the Attorney General's opinion on this issue and I am looking forward to getting that in writing so that we can proceed on this section. If there are concerns then this section on page 6 of the Bill, Section 22-22.4, mandatory disclosure of pesticides and

Genetically Modified Organisms. Depending on what our County Attorney and the Attorney General says would impact this particular section, is that correct?

Mr. Alston: Yes.

Ms. Nakamura: Is that your understanding?

Mr. Alston: What the Attorney General says should obviously be given weight, yes.

Mr. Hoshibata: I agree.

Ms. Nakamura: So, I have a question relating to...

Mr. Alston: If I may Councilmember.

Ms. Nakamura: Yes.

Mr. Alston: I believe what the Attorney General has to say on other issues as well that are presented by this Bill should be given consideration because the State preemptive impact is not limited to this one issue.

Ms. Nakamura: Yes. I have a question about after the fact EIS on private lands and some of them, I think are on public land as well. But do you have any thoughts about that provision of the Bill regarding EIS?

Mr. Hoshibata: One thought that I have is that if this law does passed and it does require an EIS, number 1 the EIS is going to take a very long time and it is going to cost a lot of money. After the EIS is finished, there is going to have to be a permitting process that is put in place and it is going to have to have rule-making, Administration, or a list of rules to follow. By the time all of that gets done the seed companies are going to be irreparable harmed because they are not going to be able to do what they do which is getting into the moratorium aspects of the Bill. That moratorium is going to kill the seed companies and that is clear as day. The EIS and the processes that I just spoke about is probably going to kill the seed companies as well.

Mr. Alston: By that, no one should think that you are going to destroy Syngenta or Monsanto or the company, but you will destroy Kaua'i as a viable place to do business with that sort of limitation on the operation.

Ms. Nakamura: Paul?

Mr. Achitoff: Well, I really cannot get into rhetoric about what will and will not happen to the seed companies. I have not seen any economic analyses as far as I can tell, it is just lawyer talk right now. If we are talking about whether the County can in fact enact a moratorium, to me, the legal analysis is if they do that, would that affect an unconstitutional taking of some kind? Again, I would like to reference the U.S. Supreme Court in the Tahoe Sierra Preservation Council versus Tahoe Regional Planning Agency case. This was about ten (10) years ago. The Supreme Court held that a moratorium on all development for thirty-two (32) months during the process of devising a Comprehensive Land-Use Plan did not necessarily constitute a taking. It really depends on the balancing between what is the actual impact of this moratorium? It is a fact specific balancing inquiry. What exactly is the impact, what is the need for it, and so forth? Bill No. 2491 grandfathers in existing production and this particular Ordinance has health

and safety purpose. The purpose of the moratorium is to allow more comprehensive planning. All of those factors weigh against the likelihood this would be found to be a taking.

Ms. Nakamura: Do you think there is an appropriate trigger on the EIS?

Mr. Achitoff: On that question, to be honest, I do not have a view one way or the other. I have not personally looked into the question of how an EIS may be required under a County Ordinance. I just do not know.

Mr. Alston: I would agree with that. It is not clear that the County can incorporate the requirements of the State law when the State law does not provide for any obligation to create or prepare an EIS.

Mr. Achitoff: If County were to require an EIS-like study, that would be an easier case and I would say I could not imagine any reason why they could not. But if you characterize it specifically as an EIS under State law, then I would say that I just do not know.

Chair Hooser: Councilmember Yukimura.

Ms. Yukimura: Yes, thank you. There are at least seven (7) particular provisions in the Bill that are regulatory in nature. So, as I see it, it is disclosure of pesticide spraying pre and post, buffers, dust, open air experiments, moratorium EIS, and permitting. For each one of those I just want an answer from each of you as to whether they would be likely overturned in court. Mr. Hoshibata, can we start with you?

Mr. Hoshibata: I am sorry, I was trying to write pretty quickly. You mentioned disclosure, the buffer zones...

Ms. Yukimura: Disclosure of pesticide spraying pre and post, buffers, dust, open air experimentation, moratorium, EIS – they are tied together, moratorium and EIS, and then permitting.

Mr. Hoshibata: With respect to disclosure, I think that disclosing information that relates to trade secrets, that relate to...

Ms. Yukimura: But this is just pesticide spraying.

Mr. Hoshibata: Okay.

Ms. Yukimura: Is that a trade secret?

Mr. Hoshibata: Well, on pesticides, yes. As long as you are using pesticides, you are using chemicals and combinations of chemicals that differ from one company to another.

Ms. Yukimura: Yes, but they are registered pesticides. They are not trade secrets I do not think. What we are looking at is when are they sprayed, what types of pesticides are being sprayed, and how much?

Mr. Hoshibata: Some of the provisions that talk about seventy-two (72) hours in advance, seventy-two (72) hours after. The problem is that a lot of spraying that is done by the seed companies – I will not say a lot

because I cannot say that accurately. I am not that well-versed in the details, but a certain amount of spraying is spraying in spots, not total overall spraying of all fields and for one area to have to post a sign seventy-two (72) hours in advance assuming that that area is going to be overridden with pests in the first place, I think that is something that is totally outside of the scope of reasonableness.

Ms. Yukimura: Okay.

Mr. Hoshibata: If you are going to have to disclose that certain things are going to happen or certain things are not going to happen, I think it is inherent within the industry that a lot of that is unknown. Now, to the extent that it is scheduled and everything is known about what is going to happen and when it is going to happen, there may be some way of disclosing. But to a large extent I do not see it just because a lot of it is just not possible.

Ms. Yukimura: I am wanting to hear your legal opinion about this. If this is in it the rubric of pesticides that is preempted by Act 105 or whatever, all I want to hear is it is likely to be overturned.

Mr. Hoshibata: It is likely...

Ms. Yukimura: I mean that is...I do not need to know. I can talk to the seed companies about the operational complications.

Mr. Hoshibata: Yes.

Ms. Yukimura: But from a legal standpoint, that is what I am wanting on each of these issues.

Mr. Hoshibata: I understand. It is likely to be overturned.

Ms. Yukimura: In your opinion?

Mr. Hoshibata: It is too broad, too vague, yes.

Ms. Yukimura: Buffers?

Mr. Hoshibata: Buffers are definitely going to be overturned, because it is an illegal taking under the Constitution.

Ms. Yukimura: Thank you for the explanation. Dust?

Mr. Hoshibata: Dust is number 1, it is vague and ambiguous. What is dust? How much dust are we talking about? I think it is definitely overturned because it is vague, it is ambiguous, and there is no real way of quantifying it. Furthermore, I believe that the Hawai'i Farm Act says that dust is not a nuisance and therefore is going to be protected.

Ms. Yukimura: Open air experimentation?

Mr. Hoshibata: I read the Bill and it is very vague and ambiguous and not in detail about what they mean by open air experimentation.

Ms. Yukimura: I agree.

Mr. Hoshibata:
overturned because of that.

I think it is vague and ambiguous and will be

Ms. Yukimura:
them together?

And moratorium, EIS, if you want to put

Mr. Hoshibata: Yes, as a practical matter I think you put them together because again, it will be overturned because it is an illegal taking under the Constitution, under both the U.S. and the Hawai'i Constitutions. It is a taking of property without adequate compensation.

Ms. Yukimura:

And permitting?

Mr. Hoshibata: And permitting, I would say that is part of the same process when you are talking about EIS, rule-making, and permitting process. That is going to take time. I also think that it is going to be vague and ambiguous and it will run the companies out of business. I believe that would be unconstitutional and it will be disallowed.

Ms. Yukimura:

Mr. Alston, thank you.

Mr. Alston: With respect to disclosure spraying, I think it will not withstand legal scrutiny in large part because requiring disclosure seventy-two (72) hours in advance is just simply impractical in light of the changing weather conditions and changing circumstances regarding the use of the pesticides. When you say to impose that requirement, is an unreasonable burden and an unreasonable limitation on what the companies can do. I also believe there are Federal disclosure requirements regarding usage and that those will preempt any local Ordinance. Buffers, I agree with Mr. Hoshibata. I think that they are already in the Federal regulatory schemes buffer zones and they take preemptive effect. The County does not have authority to add more. The dust issues, again, I agree with Mr. Hoshibata. The Right to Farm Act says what can be regulated as a nuisance in effect, this Ordinance declares dust to be a nuisance and I do not think it can be regulated. Open air experimentation, preempted by Federal law. EIS/moratorium, preempted as a taking and that is true under both the Federal Constitution and the more protective provisions of the State Constitution which forbid not only taking without compensation, but damaging property without compensation and the permitting is preempted by both State and Federal law.

Ms. Yukimura:

Thank you. Paul.

Mr. Achitoff: Thank you. Well, I think that the sort of wholesale dismissal of these provisions without analysis is really just meaningful. Takings law is very fact specific, particularly when you are getting into the realm of regulatory takings where you are not depriving someone of all economic use of their property. Where you are restricting their use of property in various ways to protect public health, there is a burden that the property owner is going to have to overcome to establish a taking. I think in these cases it is going to be a very stiff burden that I think the companies are going to have a hard time meeting.

Ms. Yukimura: So, you think a moratorium/EIS permitting, and open air experimentation will likely be sustained?

Mr. Achitoff: Well, let us take them one at a time. I am sorry. If we are talking about disclosure...

Ms. Yukimura: Of pesticide spraying.

Mr. Achitoff: I mentioned the Ruckles-Haus v. Monsanto case which deals specifically with this issue and I think you have to start there where the Supreme Court said that requiring disclosure even for public dissemination is not necessarily a taking.

Ms. Yukimura: So, it has a chance in court?

Mr. Achitoff: I think it has a very good chance in Court.

Ms. Yukimura: Okay.

Mr. Achitoff: Buffer zones, as to whether those are takings has everything to do with the extent of the burden, the extent of the impact, and the purpose. If in effect you are taking away all economic use of their property, that is a real concern. On the other hand, if you are not, if you are leaving them with an ability to use their property to some meaning of extent, it is much less of a problem. In terms of Federal preemption, I would challenge Council to name any Federal statute that preempts any of these things.

Ms. Yukimura: Explicit or by...

Mr. Achitoff: Either implied or expressed. I do not believe so. I have been litigating genetically engineering cases for ten (10) years, I have yet to see anything approaching expressed or implied preemption of things involving genetic engineering.

Ms. Yukimura: What about dust?

Mr. Achitoff: I am sorry, what about it exactly?

Ms. Yukimura: Do you think we can regulate it at this County level?

Mr. Achitoff: You have an Ordinance that specifically empowers you to do so.

Ms. Yukimura: And the right to Farm Act does not change it?

Mr. Achitoff: The Right to Farm Act, let us be very clear about the Right to Farm Act. The Right to Farm Act was expressly intended to preclude nuisance lawsuits, not nuisance legislation, Ordinances, or everything else. In fact, it is very clear in the Senate Report that underlay the passage of the Right to Farm Act that says, "The purpose of this Bill is to protect agricultural operations from lawsuits charging that the operation is a nuisance." The Committee Report goes on and on talking about how it is designed specifically to deal with lawsuits. It has nothing to deal with this Ordinance.

Chair Hooser: Thank you very much.

Ms. Yukimura: Thank you.

Chair Hooser: Thank you, Councilmember. Councilmember Nakamura the buzzer went off and you actually had five (5) more minutes, so you are welcome to continue for the five (5) minutes.

Ms. Nakamura: That is okay.

Chair Hooser: Councilmember Bynum.

Mr. Bynum: Thank you. Thank you all for being here. I appreciate it very much. I am going to start with the Right to Farm Bill, you just said it. I will ask the Attorneys, have you seen the Committee Reports that said that the purpose of this Bill was for nuisance lawsuits and the Committee Report where the Committee specifically was asked as one provision to truncate the County's authority and said, "your Committee believes that the Counties either through zoning laws or other Ordinance should be permitted to make laws regarding agricultural uses." That is in the legislative history.

Mr. Alston: Right.

Mr. Bynum: Are you aware of that?

Mr. Alston: Yes.

Mr. Bynum: And why is that not germane?

Mr. Alston: It is germane, but not dispositive and the reality is that the County has authority broadly to regulate dust and other construction or agricultural related activities that impact neighbors. What it does not have is the authority to step in and say we are going to have one kind of dust regulation for neighborhood farmers or people not doing GMO or other crops that we do not like and we are going to have a special regulation for you because we do not like what you are doing with these crops or with these pesticides. That, I think, runs afoul of the principles that underlay the Right to Farm Act and more broadly, other provisions of State law that are found in the Constitution as well as statutes that say to the Counties and the people, farming is an important industry to our State and it has got to be protected and promoted.

Mr. Bynum: Mr. Hoshibata, you have any response?

Mr. Hoshibata: I could not add to what Paul just said.

Mr. Bynum: Do you agree that the Right to Farm Act anticipates production agricultural activities?

Mr. Alston: Yes.

Mr. Bynum: That the purpose was there for production?

Mr. Alston: It does not distinguish what you call agricultural production and other types of farming.

Mr. Bynum: Well, I do not even know it if it is farming, it is research. I have had a lot of farmers write me and say it is not farming. Farming is when you produce a product to sell to someone. In Hawai'i Revised Statutes (HRS) and my own research of this and all of these issues are specific to this Bill, but they are also about what we have talked with here ten (10) years or more, what

are the County's authorities? In Hawai'i, my impression, what I have heard from other legal scholars is that we have unique powers in Hawai'i as Counties compared to other States. We have a unique Constitutional mandate at conservation and we have specific responsibility to protect the health and safety of our citizens, correct? That is all in our Constitution and HRS?

Mr. Alston: Every government has some responsibility to protect the health.

Mr. Bynum: So, HRS 46-17, and I want to read this because this have been very meaningful to me throughout my time as a law maker. "Any provisions of law contrary and notwithstanding, the Council of any County may adopt and provide for enforcement of Ordinances regulating and prohibiting noise, smoke, dust, vibrations, and odors that constitute a public nuisance. No such Ordinance shall be held invalid on the ground that it covers any subject or matter embraced with any statute or rule of the State, provided that any conflict between the statute, rule or Ordinance, the law affording the most protection shall apply." Protection, I am sorry. I read this and said – and I read the Constitution and I took the oath. It says you take the oath to protect the health and safety. The Constitution says you are to focus on 'āina and conservation. The HRS says, you have authority and if your laws are more protective than the State's, County you trump. Now, that is unique to very few States like you said. I am sorry, I forgot your name. Many States have specific provisions that say Counties you cannot do this. Ours actually says you can and if yours are more protective now that is my read of this, what have I got wrong?

Mr. Alston: Two (2) things. One is you have to look at the existence of the Federal regulatory scheme which has been applied to the activities of the seed companies and the fact that the Federal government has reviewed and approved every pesticide that they are using and every crop that they are planting. To suggest that the County under the rubric of statute has the authority to override what the Federal government has said is proper is just wrong.

Mr. Bynum: Mr. Alston, I did not ask you about FIFRA and I only have a limited time. So, if I would move on.

Mr. Alston: Sure.

Mr. Bynum: I would like Mr. Achitoff to answer that because to me HRS 46-17 is right on the money, right on the mark.

Mr. Achitoff: I would agree with that and I would go a little further in saying that HRS 46-17 also carves out specific exception for dust or I should say cane burning. Essentially, it says Counties, you cannot do that. Now, if the legislature intended to have other exemptions, they would put them in there. But there is one exemption for cane burning, that shows that the State is preempting the Counties on that subject. But everything else is fair game.

Mr. Bynum: Just one more thing about FIFRA. Are any of you aware of the dialogue that is happening in the Senate right now in the last week about FIFRA and the provisions that are being brought forward in the proposal because this is being discussed Nationally right now?

Mr. Achitoff: I am not familiar with that.

Mr. Bynum: Well, my read of it and somebody correct me, is that Republicans are trying to put provisions in that preempt the States and Democrats are saying no, we are not going to put those provisions in because we think the laws should set a floor and not a ceiling if the States want to do more to protect their citizens. Why are the Republicans trying to put provisions in to preempt, if it already preempts?

Mr. Achitoff: Well, the Supreme Court took care of that very clearly in that Wisconsin case, that is why if you want to preempt under FIFRA, you are going to have to amend that law.

Mr. Bynum: And that is why in my opinion, this legal question is going to come down to the State issues. The Federal issues are clear as a bell, I think that we are not preempted federally.

Mr. Hoshibata: Excuse me, Mr. Bynum. You asked a question earlier about HRS 46-17 and I would just like to make a comment on that.

Mr. Bynum: Please.

Mr. Hoshibata: HRS 46-17 states that the State, in the middle of the first paragraph, "the State shall conserve and protection agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable fields or lands." It cites to the Constitution. I believe that is at least an argument that should be considered by the Council, is that the State is given that responsibility.

Mr. Bynum: But it also contains this thing that says, "Council of any County may adopt any Ordinance," right? It is pretty straightforward, that says if your Ordinance is protecting the people more, you are good to go. It sets a floor, not a ceiling. Just like the Federal law sets a floor, not a ceiling, that is my read of this.

Mr. Hoshibata: I see that, but when there is that kind of a balancing or weighing or even an argument between State and County, that is when you run into problems.

Mr. Bynum: My last question is about Act 105. That was Dee Morikawa's Bill. It was the third or fourth year. I testified in favor of that Bill and unlike us, who have rules that says you cannot change the intent of the Bill, the State legislature does not play by those rules. Unlike us that says if you are going to make a change, the public needs seven (7) days' notice, the legislature does not play by those rules. So, Act 106, my last testimony that it was amended so poorly, that it changed the whole intention and took away the author's intention and so it is just so ironic. Dee must be – now that is being cited because there was this Bill that would have required some of the thing from the State, that is why we are here because the State has refused to do these things and to have that Bill, that got just totally changed. I really encourage you to look at the legislative history of that Bill and at the testimony because to have that now cited as saying oh, the State has a regulatory scheme is just incredible. Yes?

Mr. Achitoff: Well, I just want to comment. The assumption if the State has a law on the subject and it is here is what you cannot do or we are telling that you cannot do or that you must do, that this somehow preempted the County is just wrong. It is just wrong as a matter of legal analysis. In order to preempt, you have to find either express, implied preemption, or a

conflict and if we are talking here about implied preemption, you have to look for a comprehensive State regulatory scheme that shows an implied intent to be exclusive and uniform throughout the State. So, it has to be comprehensive and you have to look for some indication that the State actually intended to be exclusive. You cannot just say because the State did this, the County cannot.

Chair Hooser: I want to let you all finish your thoughts. So, I will not be interrupting. But we are going too long. I believe that is the end of the time period. So, Council Chair Furfaro. I am sure some of these topics will come up again in a second. Chair Furfaro.

Mr. Furfaro: Mr. Hooser I only have one (1) question and I will yield my time because I am not on the Committee. All three (3) of you gentlemen referenced Ordinances on the books that exists as it deals with controlling dust and grubbing and so forth. Were you referencing our Grubbing and Grading Ordinance as it relates to the application for soil conservation district?

Mr. Alston: Only generally. But I cannot say that I can speak with any expertise or specificity about that Ordinance. But generally, the Counties do have authority as Section 46-17 reflects, to control those sorts of things because they exist in every community.

Mr. Furfaro: It is just that you said existing Ordinances so I wanted to get clear in my mind? Could I get a confirmation of your thinking?

Mr. Achitoff: I am actually not familiar with that Ordinance.

Mr. Furfaro: How about you, sir?

Mr. Hoshibata: I am familiar with the Ordinance slightly and it is on grubbing specifically and grubbing and grading. But I do believe that HRS 46-17 takes care of that, answers that question.

Mr. Furfaro: Mr. Hooser, I yield my time back to you.

Chair Hooser: Thank you very much. I have a few questions. I would like Mr. Achitoff, resume what you were saying when I cut you off in terms of the circumstances under which preemption applies. We were talking about 149A, I believe. For those of you in the audience, 149A is a State pesticide law. In your opinion, does that preempt provisions of Bill and if you could talk about what are the elements of preemption?

Mr. Achitoff: The reason why I say that the State pesticide law simply does not preempt this Bill is that the State pesticide law simply does not have either expressed – it clearly has no express preemption provisions unlike over forty (40) other States which do. So, we have to deal now with implied preemption. For there to be implied preemption, you need to be able to find – and the burden is on the party claiming preemption. So, that party is going to have to show that the State pesticide law displays an intent by being a comprehensive regulatory scheme that is intended to be both uniform throughout the State and exclusive of County regulations. That intent is not found in the statute or in the legislative history of our pesticide statute. There is no such language. The statute itself is no so comprehensive as to implicitly occupy the field. There are other State statutes that are more comprehensive. You may look at our State statute and say it seems pretty comprehensive to me, but if you actually look at other States, they have dealt with a

lot of issues that are not dealt with our State pesticide law that the County Ordinance, this Bill, is intended to fill some of those holes. So, there is just simply no strong argument that the State preempts because they have a law of the same subject matter by no means suggests preemption.

Chair Hooser: Thank you. I know that you have worked in this field extensively. Are there other Counties that have GMO or pesticide regulations?

Mr. Achitoff: In terms of pesticide, I would just site a couple of very recent County or municipal-level Ordinance. About two (2) weeks ago, the City of Tacoma Park in Maryland, the City Council passed the Safe Grow Act of 2013 which generally restricts use of cosmetic lawn pesticides on both public and private property throughout their City. The year before, Washington, D.C. enacted the Pesticide Education and Control Amendment Act of 2012 which offers protections from restricted-use pesticide on public properties near waterways, schools, day care centers, city owned property, etcetera. So, the County will not be alone in doing that sort of thing. With respect to GMO-related Ordinances and bans, there are about a dozen Counties and municipalities around the Country that already have moratoria on GMO production which basically says that you cannot do that at all. To my knowledge, none of those have been overturned in Court. So, at the State of the law right now or the status quo is that Counties do have the right to simply say we are a GMO-free zone. This Bill does not even go that far.

Chair Hooser: And there has been some discussion on the EIS portion. If the EIS is separated from the moratorium, so it is two (2) different issues and simply viewed as a thorough and robust investigation of the impacts, does the County of Kaua'i have the legal authority to do an independent investigation of the impacts that these activities might be having on this island?

Mr. Achitoff: All I would say is I cannot imagine why it would not. I would think that in fact, it would have a duty to do that, to inform itself to be able to craft its Ordinances properly.

Chair Hooser: I believe – correct me if I am wrong. Ten (10) years ago you were involved in a lawsuit, or nine (9) years ago regarding the companies here on Kaua'i. One of the reasons for this Ordinance is that we do not know what is grown and I believe, were there bio-pharmaceutical crops being grown in our County in the past that you know about?

Mr. Achitoff: Yes. I can go so far as to say they were being grown in the County because that was public record. I cannot go any further saying where within any of the Counties they were being grown because that was the subject of a protective order in that litigation. While I was given access to that information, nobody outside of the litigation including people such as yourselves, even the Governor, would not be allowed to know.

Chair Hooser: Thank you. Was that my five (5) minutes? Okay. We have a few more minutes. Back to the recent State law that was just passed regarding pesticide disclosure. It is my understanding that disclosure is based on Department of Agriculture's record of pesticide purchases, but does not include the use of the pesticide, the geographical location of the pesticide, the public notification of the pesticides, or other information that is being requested in this Bill. Again, do you think that provision would foreclose the opportunity for the County of Kaua'i to pass this measure as it stands?

Mr. Achitoff: If the question is one of preemption, I see nothing in the State law that either expressly or impliedly preempts local regulation and I think it is well accepted that Counties can go further than the State and make more restrictive laws unless in fact there is expressed or implied preemption. The other question would be whether this Ordinance would require for public disclosure, material that the companies may consider to be their trade secrets and that is a question that, I think whether or not that would constitute a taking would have to do with a weighing of the nature of the trade secrets being requested, their importance to the public health, the impact on the companies, and things like that.

Chair Hooser: The Monsanto Protection Act, could you talk briefly about that? It is commonly referred to as Monsanto and any relevance that that might bring to the discussion?

Mr. Achitoff: The so-called Monsanto Protection Act was a codification of a tactic that the industry came up with in response to some litigation that I was involved in, in which the Court decided that the Federal government had unlawfully put on the market some genetically engineered crops and the government responded by issuing special permits to allow the industry to continue to grow the crops while the government complied with the laws that they had broken in the first place. The industry put that into Federal law through a rider some months ago. The first thing I would say is that the whole application of the so-called Monsanto Protection Act expires at the end of the Federal fiscal year in two (2) months and I would personally very much doubt it would be re-enacted. So, in two (2) months it will be moot. The other thing is moot or not, I see absolutely no relevance of that to any issue raised by this Ordinance. It essentially says that if a crop is de-regulated by the Federal government, meaning that Federal oversight is withdrawn and the Court says that was done unlawfully, permits will be issued to allow the growing to continue while the government does its required work. I just do not see how it relates.

Chair Hooser: Thank you. We are going to go ahead and go to the second round. Do not feel obligated to ask questions if the issue has been covered. But we are going to go a second round and all follow-ups could be in your second round. Councilmember Kagawa.

Mr. Kagawa: Thank you, Chair. Well, we are talking about preemption a lot and nobody has stated a specific case yet. But there is Richardson vs. City and County Honolulu, 1994 and it reads, "Under Hawai'i law, a municipal Ordinance may be preempted pursuant to HRS 46-15.13 if one, it covers the same subject matter embraced with the comprehensive State statutory scheme, disclosing an expressed or implied intent to be exclusive and uniform throughout the State, or two it conflicts with State law." It is not saying that preemption is guaranteed. It is saying that I guess there is a case for crying foul for preemption I guess, should we pass this Bill, is that fair?

Mr. Achitoff: Yes, that is an accurate reading what the case says and the case actually just basically interprets this Hawai'i Statute 46-1.5 Subsection 13, that is what it says. The question is first, is there express preemption? I think the answer to that clearly is not. There is not because forty-one (41) other States have express preemption clauses in them, Hawai'i is not one of them. So, then the question is, is there implied preemption? Well, there has to be, for implied preemption, a comprehensive statutory scheme that shows an intent to be uniform and exclusive throughout the State. I do not see in either in the legislative history or in the words of the statute any such implied intent to be

the sole regulation of pesticides anywhere in State. You cannot just assume it, but you have to find some basis for that.

Mr. Kagawa:

Thank you.

Mr. Alston: The problem with that is, as Councilmember Bynum described the Bill started out being very different and through the political process it ended up with the State prescribing a system of disclosure that some people do not like, but that does not mean it was not intended to be the State's policy with respect to disclosure of pesticide use. I submit that in fact that legislative process where it starts out being stronger and broader and more intrusive on the companies than what you end up with reflects exactly the kind of process that does reflect that there is intended to be a preemptive State scheme for disclosure.

Mr. Kagawa:

John, do you have anything?

Mr. Hoshibata: I would totally agree with Paul here. It is an evolution and it gets tighter and tighter and when you have the question of whether there is an express or implied intent, the fact that you do have an exclusive and uniform scheme that does get tighter and tighter as this evolves, to me, it shows an implied intent. To me, it shows an implied intent otherwise it would not have gone that far.

Mr. Kagawa: Alright. Second question regarding HRS 46-17, can you describe what a public nuisance is and also maybe if just one of you can answer on that one and what is the difference between a public nuisance and private nuisance? You want to go first?

Mr. Hoshibata: I am sorry, I am looking for (inaudible). I did have that. Give me a second.

Mr. Kagawa:

If Paul is ready, then you can go ahead.

Mr. Alston:

I am sorry.

Mr. Kagawa:

What is your definition of...

Mr. Achitoff:
about?

Just to be clear, which law are we talking

Mr. Kagawa:

HRS 46-17.

Mr. Hoshibata: Under HRS 46-17, the Council or the County may end up and provide for enforcement of Ordinances regulating or prohibiting noise, smoke, dust, vibrations, or odors which constitute a public nuisance. The statute cannot countermand the Constitution directive – well, this is my argument. The statute cannot countermand the Constitution directive that instead of the Counties. The State is there to protect these, to conserve and protect agricultural lands, etcetera. When you talk about dust as a nuisance, I mean, that is what it is. Dust is a nuisance. I do not know if I answered your question. You wanted to know what the Ordinance was or how it is applied?

Mr. Kagawa: I just wanted to differentiate, I guess, between a public nuisance and a private nuisance. Is there a difference?

Mr. Alston:

The breadth of the impact.

Mr. Achitoff: Right. If your neighbor is doing something that bothers you and nobody else, it is a private nuisance. It is something that bothers the whole neighborhood, it can be a public nuisance.

Mr. Kagawa: Thank you. That is pretty simple. Last question.

Mr. Alston: That is why we are here for, to simplify it.

Mr. Kagawa: You folks have different opinions on almost every question and not even close. You are way on this side and they are way on that side. But I just wanted to solve the problem of Right to Know and say a person in Waimea simply wants to know what is being sprayed and when so they can close their windows at night and instead, on that night turn the air conditioning on or the fan on and not be worried that their kids or themselves are breathing in chemicals. Do we have to go with this kind of Bill that will be challenged in Court and nothing will be done for a while? Is there not a better way that you can agree? I know you agreed and one thing and I should have wrote it down because I liked that, when you agree because that is where we need to be headed is when we can work together and solve a problem, like Mr. Warren back there. Just people who want to know so that they can protect their families, when and how. Is there a better way that you folks can suggest rather than trying to pass this Bill and trying to enter an area of legal problems that we foresee? You can go first this time. Do you want to go first?

Mr. Alston: Oh, I do not care. Can I suggest that question can best be directed to the representatives of the company who are in the field because obviously, in lieu of legislation you could have neighbor-to-neighbor community discussions that would address those issues?

Mr. Kagawa: That is a suggestion.

Mr. Alston: They are in the best position to talk about what is possible from just a purely operational stand pointed.

Mr. Kagawa: That is a suggesting, that neighborly talks. Go ahead.

Mr. Achitoff: Well, I would respond to that by saying that I am all in favor of neighbor-to-neighbor conversations to at least provide basic information about what is feasible and so forth. But I also think that the bargaining power as between Syngenta and its neighbors is so lopsided that I think the government needs to step in to make sure that the playing field is more level. As far as whether there is a different way to get notice...

Mr. Kagawa: I guess just a better suggestion?

Mr. Achitoff: Well, all I can say is that if the industry is going to challenge anything that the Council does, and it may, than anything that you do is going to end up in Court and if that is the concern then you are never going to do anything that disturbs the status quo. If there was a portion of the Ordinance that industry did not object to, say a notice provision that the industry was fine with, then you could of course do an Ordinance on that subject alone and just say okay we are going split this off and everybody is okay with it so let us do

that. I certainly would not just leave it up to the companies and say well we will tell you what we are willing to do and trust us that we will do it.

Mr. Kagawa: I am done. Thank you

Chair Hooser: Councilmember Rapozo.

Mr. Rapozo: Thank you, Mr. Chair. I think that is kind of what my message when we started was, was there has to be a vehicle that we can get together and figure out where we agree and then where we do not agree is where we have the dialogue and debate. But right now we are in one big mess and no one wants to agree or disagree because of the division that has been created and I think that is my concern. So, no one is even willing to, I think, listen at this point. But I am more interested in this preemption issue and I do not want to beat a dead horse, but where does it end as far as the County's authority? Can we raise the minimum age for drinking? Can the County raise the minimum age for cigarettes because of the public health/public safety doctrine? I think that is where I am at. I am listening to all that you are saying and you all make sense, do not get me wrong, you folks all make sense. I am like, wow, does that mean we could just simply create a Bill tomorrow and say that we want Kaua'i, the minimum age to drink to be twenty-five (25) because we have too many accidents in the eighteen (18) or nineteen (19) or twenty-one (21) to twenty-five (25)? At what point, and I understand implied and expressed, but...

Mr. Achitoff: I think you have to actually look at the State or Federal law that you are dealing with. If it is drinking age for example, you have to ask specifically, what does the Federal law say about drinking age? What does the State law say? Is there an expressed or implied intent to preempt? There may be, there may not be. You cannot make a generalization.

Mr. Rapozo: I guess the point the implied is obviously, two (2) different people, like you folks can differ on what is implied or not. We, the Councilmembers here, have to make a determination whether it is implied or not. Express is obvious.

Mr. Achitoff: Yes, it is. But terms of implied, if we are talking about the State pesticide law generally, I would have to say considering that the pesticide lobby has managed to get forty-one (41) States to insert express preemption language in those States' pesticide laws, but has not done so in Hawai'i, has not succeeded yet in doing so in Hawai'i gives you some clue as to the fact that they needed that express preemption language because implied preemption was not cutting it. In other words, if there already had been implied preemption in all of those State pesticide laws, the industry would not have done what it did and those State legislatures would not have done what they did. So, Hawai'i is one of a small number of States that does not have local preemption of pesticide regulation.

Mr. Rapozo: Does the fact that forty-one (41) States have it and we do not have any relevance in the Court case if should we go to Court?

Mr. Alston: Not at all.

Mr. Rapozo: I know what they are doing. I am more curious about here in Hawai'i and what we can and cannot do and whether or not Oregon, Colorado, Wisconsin whoever did these express preemptive Bills, I am not sure that would hold any weight in Hawai'i.

Mr. Alston: It does not because the home rule powers the County. Counties in Hawai'i are unique to Hawai'i. Every jurisdiction is different and every State draws the line between what States can do and Counties can do differently. So, what happened in forty-one (41) other States tells you nothing about what the law is here and what is preempted and what is not preempted.

Mr. Rapozo: I mean every law has its own set of facts and circumstances which is so different because we have so different and that is, I think my concern and that is why it is interesting to have Attorneys from both sides here.

Mr. Hoshibata: It is not only every law, but it is all the facts and circumstances that caused that law to be either debated or ejected or in forty-one (41) States, accepted. So, you have to look at totality of the facts and circumstances and we do not know anything about – at least I do not and if you give me a couple of months maybe we can figure out exactly what happened in those forty-one (41) States and whether or not there is any similarity at all to Hawai'i Revised Statute 46-15.

Mr. Alston: But related to this, I think Councilwoman Nakamura was on exactly the right course and go find out what the Attorney General says because you will at least have the view from above, if you will, and from someone who does not have a dog in this fight over this Ordinance.

Mr. Rapozo: It is interesting because we have the Attorney General, the then Attorney General Warren Price, made a strong plea and then we have a former Attorney General obviously who is now representing one the companies. But it is bizarre. It is just bizarre and we are here, not lawyers, and we have to rely on the information that we get. But it is interesting how this issue will be debated one way or the other and with arguments that I just wish we could get through this without going to Court because I think somebody said it earlier. I do not want this County to be the vehicle to establish case law because we cannot afford it number 1, there has got to be a better way and I am hoping that we can get to that end – just here, simple questions. You agreed on one and it was public and private nuisance, that is it.

Mr. Alston: We also agreed that it is Monday.

Mr. Rapozo: Yes.

Mr. Achitoff: Is it?

Mr. Rapozo: I do not think so.

Mr. Achitoff: As far as the State preemption goes, I know that the burden is on the industry to show where and how that the State pesticide law preempts Bill No. 2491. You cannot just say it is preempted because we have a pesticide law, that does not cut it. You have to show where is this and we know that there is no express preemption. So, show us how this constitutes a comprehensive regulatory scheme that is intended to occupy the field and be the exclusive pesticide regulation.

Mr. Rapozo: I understand that.

Mr. Achitoff: If you cannot point it out, then it is just rhetoric.

Mr. Rapozo: I understand that, but every time they file a motion, every time they show up in Court, every time they do something in Court, we have to be there. Yes, the burden is on them, but it is not just them. It is us.

Mr. Achitoff: I understand. But all I am saying for the context of this hearing is they are here right now. If they cannot point out to you where in the law they found this, then I would say at this point it is just arguments. They are being paid to come here and do the best they can, that is fine.

Mr. Rapozo: I would hope that you would give us enough respect that we know that.

Mr. Achitoff: Right.

Mr. Rapozo: That we see that, that this is not the Court of law. This is more of an informational thing and sometimes I feel with some of the testimonies like hey, dummy, do you not see it? We do, believe it or not. We do. But we have to sort through everything, what you say, what they say. It is not just what you say is right and what they say is wrong and vice versa. But that is the impression I get from a lot of the testimony that we received and that is the frustration because we have to make the decision that is going to take this action through a specific direction, a course that may cost this County a lot of money and I am saying there has got to be a better way. Much like the companies have proprietary secrets or trade secrets, these Attorneys, as well as yourself, I am sure strategizing for the future. I mean, both of you, both sides, three (3) of you are strategizing for the future. You are obviously not going to put out your case here at the County Council Meeting today. I am aware of that, but I am trying to get through the facts of – I guess, what do you call it the County Attorney's? The opinions of fact versus strategic, we want the facts. What does the law state? What has the law proven so far? I really am not interested in speculation. I understand that. I think I know that. I have been around long enough to know that every case has two (2) arguments and every case one wins, one loses. Sometimes the right one wins, sometimes the right one loses, that is just the way the system is setup. But my job is to get through all of that and try to determine what is real and what is speculation and at that point, make an informed decision. Will that be done today?

Mr. Hoshibata: No.

Mr. Rapozo: Of course not. Do I have a lot to learn and research? Absolutely. I have been reading. I think JoAnn mentioned the thousands of testimonies and appreciate all the testimony and the videos and the clips and very compelling stuff out there on both sides. I just want you folks to understand that we are here just trying to find facts to make the right decisions. That is all I have got. Thank you

Chair Hooser: Councilmember Nakamura.

Ms. Nakamura: Just a procedural question, will we be taking a lunch break?

Chair Hooser: The plan is to take a lunch break. The tentative was at 1:00 p.m.. There might be one or two other testifiers on the science and medical that might need to leave. But let us finish this and at least finish these gentlemen hopefully, before we go to lunch?

Ms. Nakamura: I have a follow-up question for Mr. Achitoff. You mentioned the Tacoma Park, Maryland case and you mentioned another one. I just did not catch that and I wanted to see if I could get that?

Mr. Achitoff: That would be Washington, D.C. It is something called the Pesticide Education and Control Amendment Act of 2012.

Ms. Nakamura: Maybe if I could ask our staff to follow-up on that.

Mr. Achitoff: I have written testimony with all of this stuff in it which I can hand out and it actually has the link to that.

Ms. Nakamura: Thank you, that would be appreciated. A question for all of you. Is the State preempted from enacting legislation or promulgating Administrative Rules that regulate pesticide use in the same manner as this Bill?

Mr. Alston: Is the State forbidden?

Ms. Nakamura: Yes, can the State pass laws or promulgate rules, their own administrative rules, to accomplish what we are trying to accomplish?

Mr. Alston: The State has authority to act as long as it is consistent with Federal law and it is not just FIFRA. It is also the Plant Protection Act, it is also the Food and Drug Act. There are also other Federal laws that bear on this and weaving the path between all of these Federal schemes, is not an easy task. It is something that is going to require a significant effort.

Ms. Nakamura: Would anyone else like to comment?

Mr. Achitoff: I agree.

Mr. Rapozo: That is three (3).

Mr. Achitoff: I am keeping count too.

Mr. Hoshibata: And let us make it unanimous.

Ms. Nakamura: Also, can the Department of Agriculture promulgate rules under HRS 149(A)33 to implement buffer zones and disclosures?

Mr. Achitoff: It is the same answer.

Mr. Alston: Yes.

Ms. Nakamura: Same answer?

Mr. Achitoff: Yes.

Mr. Alston: There are buffer zones prescribed under Federal law. The question is could the State enact larger buffer zones? Probably not if the Federal government says these are the appropriate zones, then that is what controls.

Ms. Nakamura:
does that State has authority?

If the Federal government is silent, then

Mr. Alston:
opens the door to State regulation, yes.

If Federal law is completely silent, then that

Mr. Hoshibata:

To imply, right.

Mr. Achitoff: I would go further than that and say that the Federal government does not have to be completely silent in order for the State to be able to enact more restrictive laws. In order for the State not to be able to do more restrictive or greater buffer zones, the Federal law would have to expressly or impliedly preempt in this area. So, someone would have to point out to me where the Federal government says these and only these buffer zones will control and I have not seen that.

Mr. Hoshibata: Well, I think that is a problem that we talked about just one minute ago where we have a confluence of different Federal schemes, Federal acts, Federal statutes and in particular, I think it is part of FIFRA that says that you are guided by what is on the product label. So, if the product label says that you can spray two hundred fifty feet (250') away from a residence or so, then that becomes the standard that you are governed by. It is all intermeshed.

Ms. Nakamura:

Thank you.

Chair Hooser:

Councilmember Yukimura.

Ms. Yukimura:
case was upheld?

Mr. Achitoff, the Tacoma Park, Maryland

Mr. Achitoff:
the...

It is not a case, it was just an Ordinance that

Ms. Yukimura:

It is an Ordinance? Was it tested...

Mr. Achitoff:
only passed a week or two ago.

It was an Ordinance that was passed. It has

Ms. Yukimura:

So, it has not been tested in Court?

Mr. Achitoff:
(2) weeks.

Not to my knowledge, no, not in the last two

Ms. Yukimura:
twenty (20) years ago?

Then you mentioned the moratorium case

Mr. Achitoff:

Yes.

Ms. Yukimura:
in the last twenty (20) years that would affect the moratorium decision?

There have been no changes in Federal laws

Mr. Achitoff:

No.

Ms. Yukimura:

So, no case law or Federal law?

Mr. Achitoff: Not to my knowledge, no.

Ms. Yukimura: Gentlemen, Mr. Altston?

Mr. Alston: To the case that it deals with the preemptive scope of FIFRA or the lack of preemptive effect of FIFRA, I would agree that that is still the seminole case.

Mr. Hoshibata: With that limitation also, there has nothing that has overturned that case.

Ms. Yukimura: While FIFRA does not preempt or stop States from doing their regulations, the Federal law does give strong authority to the State which then can be said to preempt local government? Is that where the real obstacle to local government law comes?

Mr. Achitoff: Yes, that is fair. The State does have the ability to decide the extent to which the Counties can regulate in this area, yes. So, if the State expressly or impliedly was preempting the County, it could do that. I just do not believe it has, but it could be.

Ms. Yukimura: Any disagreement?

Mr. Alston: Well, it is also where the County wants to do conflicts with a scheme that State has set up. You do not need to have broad preemptive intent if there is a conflict between the County law and State law?

Ms. Yukimura: Even though the County's law is stricter and more protective?

Mr. Alston: Yes.

Ms. Yukimura: Okay. So, it goes back to, as Council Vice Chair said, the State really is the one that has the most unquestioned power to do the regulations as to pesticides?

Mr. Alston? To do did the regulation of pesticides?

Ms. Yukimura: Buffer, disclosure, etcetera?

Mr. Alston: Unless the Federal government has set National policy with respect to those things.

Ms. Yukimura: Unless the State regulations conflicted with Federal?

Mr. Alston: Or the local Ordinances conflict with Federal. The State cannot do something that conflicts with the Federal scheme. The Counties cannot either.

Ms. Yukimura: Right.

Mr. Hoshibata: I think we are still talking about that Federal/State/County sort of level.

Ms. Yukimura: Yes, and the way that the Federal legislation is set up which is the higher authority as along as it does not conflict with the Constitution and other laws, I guess, is it gives a lot of power to the State to regulate pesticides, right?

Mr. Hoshibata: Yes.

Ms. Yukimura: Right. So, as along as the State does not conflict with Federal law, then the State has quite broad authority to deal with pesticides?

Mr. Hoshibata: Yes.

Ms. Yukimura: But the Counties are not in the same situation. They do not have broad powers to deal with pesticides because under Federal law the State has been designated there.

Mr. Achitoff: I would not say that. I would say that the Counties have the same authority that the States have with regard to whether or not that is going to be preempted by Federal law. The real question, I think, is that the County is just deemed to be a subdivision of the State for that. So, the question is whether the State has preempted County authority to the extent that it has not, the County has the same ability to regulate pesticides as the State.

Ms. Yukimura: The Right to Farm Act does not really have any play here with respect to pesticides, but it does when it comes to nuisances like dust?

Mr. Hoshibata: Yes.

Mr. Achitoff: In my opinion it has nothing to deal with any of it unless we are dealing in the realm of lawsuits.

Ms. Yukimura: Okay. I would like to ask each of you how you think the Public Trust Doctrine, especially with recent Hawai'i Supreme Court cases, applies to this issue?

Mr. Alston: The Public Trust Doctrine is simply one aspect of the County's authority and responsibility to regulate for the health and welfare of the people of the island. It, like everything else, is subject to being preempted by State control and by Federal control. The recent decision in the Kaua'i Springs Case and the earlier decision in the Hokuli'a case, all reflect that the Counties do have some independent responsibility, but those decisions tell you nothing about the scope of the authority to act to protect the people and the environment. To decide whether the County has that authority you have to look at what the State has done to limit County action and what the Federal government might have done to limit both State and County actions? It is no different than any other legal analyses. It does not help, it does not hurt, it is just part of the legal framework in which all of these issues have to be decided.

Ms. Yukimura: But the Court is still developing this doctrine and so is it possible that this doctrine could throw a different twist to the whole preemption issue?

Mr. Alston: No.

Mr. Hoshibata: No. I defer to Paul on his analysis of the Public Trust Doctrine, but I agree it would have no impact on the preemption issues we have been discussing.

Ms. Yukimura: Or the Right to Farm?

Mr. Hoshibata: Or the Right to Farm Act.

Ms. Yukimura: Thank you. Paul.

Mr. Achitoff: I think the only thing I would add to Paul's statement about that is that the Public Trust Doctrine by its nature, is something that is on a somewhat different category than statutory law in the sense that the bottom line concerns that the Public Trust Doctrine is designed to safeguard cannot be eliminated simply by passing a statute that is in conflict with the public trust duty. That is why the Public Trust Doctrine came about, was it is a common law doctrine that says the State cannot give away through legislation the public's right to certain basic protections of natural resources and so forth because that is what was happening. The State was saying okay, we are going to give private business the right to do this and the Supreme Court at that time was about one hundred (100) years ago, said, wait a minute, you cannot alienate the public's right to navigable waters, for example. It is just not yours to give. So, the doctrine can affect the extent to which the State and Counties or even the Federal government can impair the public's right to certain things.

Ms. Yukimura: But do you think it would affect the preemption doctrine?

Mr. Achitoff: I do not think it directly relates to the preemption doctrine itself.

Ms. Yukimura: Alright, thank you.

Chair Hooser: As we head toward lunch, Councilmember Bynum followed by Council Chair.

Mr. Bynum: I just want to review some of the things that we learned today and see if it is right. If it is redundant, I apologize. But I was stuck on a couple of these things. I hear agreement that there is no express preemption in State law. All three (3) of you agree on that, right?

Mr. Alston: On what issue?

Mr. Hoshibata: This issue?

Mr. Bynum: Expressed preemption and State law of regulating pesticides.

Mr. Alston: That is right.

Mr. Hoshibata: I would agree.

Mr. Bynum: And we know that the Attorneys from the seed companies have said if we pass this law, they will sue us. You were pretty clear about that. Mr. Achitoff is saying that all seven (7) elements of this Bill are legally defensible, right? Is that a fair summarization?

Mr. Achitoff: Yes.

Mr. Bynum: And the Attorneys are saying all seven (7) things that would outline are not legally defensible? We would lose on all seven (7) counts, correct?

Mr. Alston: Correct.

Mr. Hoshibata: Correct.

Mr. Bynum: This is not uncommon people. When you put Attorneys in the room together that represent two (2) different sides and it comes down to us. So, here is what I am stuck on. To expressly not, the Senate is debating whether they should at the Federal level preempt and the Democrats are saying no, it is a floor. This is the protective floor set by the...if you want to be more protective, good for you and that is what our State law says. It says you will protect the health and safety of your citizens. It is your responsibility. So, I have been doing this long enough I have to look at case law and I asked this question earlier. I have to look at legislative intent. I cannot find anything where the legislature ever said we intend to preempt the County. But I can find...

Ms. Nakamura: Point of order.

Mr. Hooser: Yes, what is your point?

Ms. Nakamura: If the Councilmember could ask the question in this format that you have set up.

Mr. Bynum: I object to being interrupted for the first time in this day during my time. If I want to...

Chair Hooser: Councilmember...

Mr. Bynum: Councilmember Rapozo went five (5) or six (6) minutes expressing his opinion in order to set up a question and that is what I am doing.

Chair Hooser: Let me speak. I could speak, please. I have given discretion to every single member here to use the ten (10) minutes as they pleased. Some have clocked longer, other members have had decided to go on. We are at the very end of the thing. Councilmember Bynum, in my opinion, can proceed and I encourage to ask questions. But I have let every member proceed with their ten (10) minutes as they see fit and I do not want to change that right now. If that is okay, please continue Councilmember Bynum.

Mr. Bynum: I will ask the question again because I did not hear an answer that was acceptable or if I understood and if it is me, I take responsibility for that. But when I look at legislative intent and I can read these notes. It says your Committee believes that the Counties, either through zoning laws or other Ordinances should be performed to make laws regulating agricultural uses. That is what I can find in the legislative intent. I cannot find anything else. My last point, are you aware this year that the seed companies promoted a Bill to change the law for the first time since statehood, to take the provision that gives us the responsibility to protect health and welfare out of the State law? Are you folks aware of that? Are you aware of testimony from the seed companies where they said we need this law because neighbor island Councils in Maui, the Big Island, and

Kaua'i are proposing these regulations so we need to change this law. But it failed. It failed. The legislature did not agree that it should take away the responsibility. Are you folks aware of those laws? My question, why are they working so hard to change this fundamental law if it is already preempted? Why?

Mr. Hoshibata: I have to say I am not aware of that Bill that you just mentioned or the action on that.

Mr. Bynum: Okay. I am done. Thank you.

Chair Hooser: Thank you Councilmember Bynum. Council
Chair Furfaro.

Mr. Furfaro: Yes, Committee Chair, I just want to remind you whatever the dialogue and the decision was yours. But in the future, you must ask the member to quote the rule number that they want to have challenged, okay? Short question for you here. Whatever we do as a political subdivision at the County of Kaua'i level, we are very limited on general laws that we can apply especially to Department of Hawaiian Homes Lands (DHHL). Can I hear a comment from you on that jurisdictional issue? The DHHL has a number of agricultural lands that with the exception of a few general rules, our subdivision cannot impose?

Mr. Alston: I understand that to be true. I cannot tell you what the dividing line is between what you cannot and can do with respect to DHHL lands. But it is certainly true that they are not of the same character as other public and private lands on the island when it comes to your power to regulate. If I could just briefly be indulged with one sentence in response to Councilmember Bynum's question. I think the answer is efforts are made in the legislature all the time to bring clarity to difficult legal issues. You have heard conflicting legal views about what is right and what is possible here and I think everyone would agree that it would be most efficient if the Legislature would be absolutely clear about what is preempted and what is not preempted. But where you have legal doctrines that say the Courts are going to be guided by the implications of things, that leaves a lot of room for lawyers to argue and for people in black *mu'u mu'us* to make decisions that perhaps in a better system would be better dealt with by the legislators in explicit terms.

Mr. Hoshibata: If I may add, I think your attempts are admirable in terms of getting people together and getting the best people that you can. Although I wish there had been more notice to allow more people to get here with perhaps a broader scope and more precise information. But this is the way to solve the problem is to get the information and to call in the science and the technologists, I think is the right way to move and to allow you to form your basis for which direction you think you can move in.

Mr. Furfaro: I will yield my time since I only have one question and they seem to be more focused on responding to Mr. Bynum. I will send a question over. Department of Hawaiian Homes has a significant amount of agricultural lands here. I think it is important for us to know what we can and cannot impose on.

Mr. Alston: I think we would be happy to respond with supplemental information. I know the issue, I just cannot tell you today where the dividing line is.

Mr. Furfaro: Fine, we will send it over in writing.

Mr. Alston: Alright, I would be happy to help with that.

Chair Hooser: Thank you, Chair.

Mr. Furfaro: Thank you, Chairman.

Chair Hooser: We are going to go to lunch in just a second. I had a question or two and I agree. I think several people had mention that mentioned that we need to bring everybody together and analyze the data and talk about the science and pesticides. I guess my question is for you two (2) gentlemen, you are employed by Pioneer and Syngenta and if at the end of this day the majority of this Council, which in effect would represent a majority of the community, passed an Ordinance requiring disclosure and saying that toxic pesticides cannot be sprayed next to schools and the County intends to do a full investigation and report a robust investigation and EIS or some other form and that was passed in a law after the community process and the majority voted there, could we expect that you would sue us for the right to not tell us what chemicals are being sprayed and for the right to spray chemicals next to schools and oppose our right to investigate via EIS or otherwise?

Mr. Alston: Syngenta is proud of its record and proud of its work on Kaua'i.

Chair Hooser: I am not asking about pride. I am asking about a legal question.

Mr. Alston: Let me finish.

Chair Hooser: Would you sue the County of Kaua'i to enforce the rights that you perceive that you have after this Council, a majority voted, representing the community interests for disclosure, for reasonable buffer zone, and for the right to do an investigation to determine those impacts?

Mr. Alston: I think you have to ask the fundamental question, which is whether the Bill you adopt is consistent with the overriding Federal and State law? If it is, your Bill will stand. If it is not, it will fall. It is a fundamental principle of our way of life that people go to court to resolve tough questions like that. You cannot tell me exactly what Bill you are going pass, I cannot tell you exactly how the companies will respond. But when a Bill is passed and if it is, the company will make a considered decision about whether it is in its best interest to get a definitive decision that you have acted in accordance with the law or not?

Chair Hooser: You have chosen not to sue the County of Hawai'i for an Ordinance banning GMO coffee or *taro* and chosen not to sue the County of Maui for passing an Ordinance banning GMO *taro*, is that correct?

Mr. Alston: There is no litigation on those things, but the companies do not grow those crops.

Chair Hooser: Right. But there has been no litigation. The companies have chosen not to?

Mr. Alston: Well, it is not a matter of choice. Someone can go to court only if they have what lawyers call "standing" and that means that they have a real stake in the issue. If you do not grow *taro*, you cannot complain about GMO *taro*. If you do not grow coffee, you cannot explain about GMO coffee restrictions.

Chair Hooser: Thank you very much. Finally, we are going to be headed out to lunch so I will just ask Mr. Achitoff in closing. You have looked at the Bill. I believe several people have asked already, in terms of the various components of the measure, do you believe we would prevail as the Bill stands? I know there is lots of work to be done and whatnot. But generally speaking, do you think that the County of Kaua'i would prevail on at least most of the issues?

Mr. Achitoff: I will certainly...

Chair Hooser: I mean, given that we had adequate legal representation and robust defense or whatever?

Mr. Achitoff: I love to answer questions yes or no when I can. I will just say that with respect to most of the issues I will say that I think the opposing arguments are weak to frivolous. With respect to some of them, I think that reasonable people can differ and I think the County should be careful about exactly how it crafts those provisions. If it is careful, I believe that there are ways to really minimize litigation risks to the point where I would say yeah, I think that they will all prevail.

Chair Hooser: Okay. Thank you very much.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Hooser: Anyone who plans to not return after lunch, please see staff at bottom of the stairs to take your name off the list and return your wristband. I apologize for those who have been waiting. We were hoping to get another segment in before lunch and we were not able to do so. We will come back at 2:10 p.m..

There being no objections, the Committee recessed at 1:07 p.m.

There being no objections, the Committee reconvened at 2:12 p.m., and proceeded as follows:

Chair Hooser: We are going to move to the next phase of the hearing of today's agenda and just a heads up, depending on how the day proceeds we may only go to 4:30 p.m. or 5:00 p.m., I have to ask the members what their preference is. We could either go until everybody that is here has spoken which I do not know how long that is going to be or our option – I will tell you what our options are. One option is to go until the end or we can recess this and reconvene at a time-specific and then continue on. Those are our options and because we had late nights before and because Councilmember Yukimura wants to go and because we might want other resource people to come, my inclination is to suggest that we recess at 5:00 p.m., reconvene a week from tomorrow and then continue the same program for just that one more meeting and then the public could take all the public testimony at the end so that we only have one late meeting and then that is it in terms of the rigorous discussions. Then after that, suggest that we defer for two (2) weeks, three (3) weeks and let everybody do their homework, let

everybody look at all of the issues, everybody review their whatever amendments that they want to do, and then schedule a meeting for that date. But we have this day and maybe next Tuesday as this kind of thing. So, think about it and then we can talk about it later or would you like to talk about it now. Councilmember Rapozo.

Mr. Rapozo: I just want to make sure that we have a chance to accommodate everybody that came today. I think that is my concern. I understand Councilmember Yukimura needs to leave for something and I had something planned today as well that I canceled to accommodate this meeting. I just want to make sure that everyone who made the journey here because it is not as easy for some people to be here, and I know a lot of people testified at the public hearing. I obviously do not remember who testified and who did not, but if the ones that did testify at the public hearing would allow the people that did not testify at the public hearing and wanted to speak today, that is the way I would ask. I would go along as we have to accommodate those people because I understand that a lot of these people work, some of them work and some of them have family obligations and I want to make sure that we can accommodate as many of those people that have not testified today.

Chair Hooser: Okay. So, what I am hearing that your preference is to go as along as it takes to get everybody to speak.

Mr. Rapozo: Within reason. I mean 1:30 in the morning is kind of stretch.

Chair Hooser: If we do not go all the way, then we would have to recess. So, it is either one or the other. But I understand. Councilmember Nakamura.

Ms. Nakamura: My preference would be to end at 5:00 p.m. as you are recommending and my preference is also to get a hold of the County Attorney's opinion that is going to be releasable to the public as well as State Attorney General's opinion and as far as my participation, I believe that that will be driving my decision-making. I do not know the value of further – and I think the discussion will lead from what those opinions tell me.

Chair Hooser: Okay. I understand that. It is my understanding that if we stop at 5:00 p.m., we have to reconvene to a time certain within a week. So, it is also my understanding that the County Attorney's final opinion may not be ready by that point.

Ms. Nakamura: My understanding is that it will take two (2) months for the County to finalize their opinion that they might be comfortable releasing.

Chair Hooser: So, if we end at 5:00 p.m., we will have to reconvene in a week to finish this Committee. If there are people here at 5:00 p.m. who have not spoken, we cannot adjourn the Committee until they have spoken or if we do adjourn the Committee, we will have to reconvene within the week to finish the process, so those are our options. Councilmember Kagawa.

Mr. Kagawa: Thank you, Chair. As a member of this Committee, I would recommend that we deliberate as much as possible today within a reasonable time. 5:00 p.m. sounds great, but maybe extended maybe to 9:00 p.m. or so, I could live with that. However, like Councilmember Nakamura, I agree that

the County Attorney's opinion as to whether this Bill should be passed or not and legal ramifications that our County Attorney foresees is all important. Why should we do all of the due diligence and then find out that it may not be something that is good for the County and instead we could have been working on some other means of getting to the place that we all want to get to as far as the right to know, etcetera. I would recommend that perhaps we consider a motion to defer until the County Attorney's opinion is available. I hope that maybe they could expedite those two (2) months because I think two (2) months of waiting is quite long. But whatever it is, it is. I am not an Attorney. It is not my job to do the opinion. Thank you.

Chair Hooser: We have people here, like you mentioned, that I think we should give them an opportunity to speak and deliver testimony myself. The question that is before us is what time do you want to end today? If any motions want to be made toward the end of the meeting you have the prerogative to do so. I get that you want to stay as long as it takes.

Mr. Rapozo: Well, I have a question though.

Chair Hosoe: Sure.

Mr. Rapozo: Do we even have any idea of how many people are signed up to testify, first time? We do not. How many people in the audience that did not testify at the public hearing?

Chair Hooser: It might be okay. We can try. So, let us move on looking at 5:00 p.m. and if we can make that or shortly thereafter, it would be great. It would foreclose the option of having to do the recess. Thank you. We are going to follow a similar format that we followed this morning. I think you all have a list of resource people that are here, that list should be on your desk in front of you somewhere. Just a couple of things, the State Department of Agriculture has three (3) individuals here who have to leave around 3:00 p.m.. Dr. Evslin is also on a fairly tight schedule. Dr. Carl Berg who has some information on Atrazine findings and recent testings that he has done also has to leave. So, those are some of the people that I know might not be able to be here until 5:00 p.m.. So, there are representatives from the Pesticide Action Network (PAN), industry representatives, and scientists that are here so you have a list in front of you. Councilmember Kagawa, why do you not start and call anyone up to ask questions about science and medical.

Mr. Kagawa: Thank you, Chair.

Chair Hooser: Go ahead.

Mr. Kagawa: That is very gracious of you. I would like to call up the State Department of Agriculture.

Chair Hooser: And we can do a round with them or you have ten (10) minutes, you can call other people after that I guess. Does that sound okay following that format that we did before? So, you have ten (10) minutes to speak with whomever you want.

Mr. Kagawa: I want to thank you for that suggestion. I think it is a great suggestion with the time constraints. Hi Thomas, can all three (3) of you please turn on the microphones and introduce yourselves, please.

THOMAS MATSUDA: Good afternoon, my name is Thomas Matsuda. I am the Pesticide Program Manager, State of Hawai'i Department of Agriculture.

CHRISTINA ZIMMERMAN: Hi, I am Christina Zimmerman. I work for the Pesticides Branch in Registration.

GLENN SAHARA: I am Glenn Sahara. I oversee the enforcement staff for outer islands.

Mr. Matsuda: Ann could not make it today. She is out on vacation leave. So, Glenn is here. He is her Supervisor.

Mr. Kagawa: Since we have ten minutes (10) with me.

Chair Hooser: No, 3:00 p.m.. Oh, I am sorry.

Mr. Kagawa: Ten (10) minutes with me. Could you just summarize briefly Kaua'i's duties right now as it pertains to pesticide restriction use? How often does our inspector go out and work with them? Briefly what he does, etcetera just so we have an understanding as to what we currently do in regards to our chemicals, our experimental seed companies?

Mr. Sahara: Well, I know the inspectors Ann Kam and I know that she has conducted inspections with all of the seed companies. I believe somebody asked for a report as far as the number of inspections that were conducted in 2011 and 2012. So, it was I think the copy that you received there were twenty-one (21) inspections conducted. But in reality, that was a redacted copy and the number she conducted in those two (2) years was fifty-three (53). So, there were fifty-three (53) inspections conducted with various seed corn companies during that period. Now, Tom could probably explain better about redactions. But when the inspection is not complete, they are not able to post it on this list. So, that is why you are missing over fifty percent (50%) of the inspections on that list that you received. Besides the normal inspections with the seed corn companies she also meets with the Pest Control Operators. She meets with the road crews, people who use pesticides, neighbors that are fighting which happens quite a bit unfortunately. Also golf courses, they are users of pesticide as well. But we prioritize complaints so that is one of the reasons she does have quite a few inspections with seed corn companies because many of the complaints involve these groups.

Mr. Kagawa: Anything more that you want to share?

Ms. Zimmerman: I do in regards to experimental pesticides. I work in the Registration Section which issues Experimental Use Permits (EUP). These permits are for the experimental use of registered pesticides, not a permit to concoct experimental products. So, that is a little bit of misinformation there so I just wanted to make sure that was clear and in addition to that, these experimental permits that are issued, there is no active one right now. These are stringently reviewed as far as their protocol. We make sure that the company has a certified applicator and that it is required that these experimental use permits are inspected. An inspector goes out to observe an application reviews the application under this EUP.

Mr. Kagawa: Thomas, do you have anything else that you want to share?

Mr. Matsuda: Just specific for the island of Kaua'i, the first thing on the testimony that Wednesday night, the question of the eighteen (18) tons came up. I was asked to bring the supporting documents so I did bring that. I can make that available to you, if you want to look at that. Again, our numbers, basically we came out with an average of active ingredients. A ton per year is 9.89 instead of the eighteen (18). Basically, we look at the active ingredient of liquid concentrate of one (1) gallon. You may think it weighs eight (8) pounds, but the actually active in there may be only four (4) pounds. So, the calculation could have been off. But our staff ran the numbers and we wanted to present that to you. Again, if you are talking about different type of products, there are twenty-eight (28) different types of products. If you are looking for active ingredients, the numbers just come down to eighteen (18). So, pesticides are kind of complex and we are here to hopefully give some clarity to your questions.

Mr. Kagawa: Thomas, if you can, can you please explain what you think is the difference between Mr. Hooser's number, eighteen (18) tons, and the 9.89 that you have? Does that mean that 9.89 is almost ten (10) tons. Where is the other eight (8) tons? Is that in inventory?

Mr. Matsuda: No.

Mr. Kagawa: Why do we have this difference?

Mr. Matsuda: Ours are sales records not use records, I want to make that clear. We receive sales records. The calculation again, there is dry weight and then there is liquid. The dry weight is pretty much just total weight. The liquid weight is more complex. Again, if you have one (1) gallon of liquid, and if you say one (1) gallon weighs eight (8) pounds, that is true in a sense. But the active ingredient, the active that does the killing, the pesticide may only be four (4) pounds in there. Again, if you look down here we have the active ingredient and the weight of the active. It might be 2.6 or 2.4. So, that is what we use to calculate. I think that is why it is a lot lower.

Mr. Kagawa: I think I do not want to cut you off. But if I am looking at all pesticides, this 9.89, all herbicides 6.6 and insecticides is 3.29. So, if you add all of those up, then we are pretty close to the eighteen (18). So, I do not know of that is what happened.

Ms. Zimmerman: No.

Mr. Matsuda: No. It will just come out to the 9.89.

Mr. Kagawa: Oh, it adds up. I am sorry.

Mr. Matsuda: What we did was we broke down the herbicide use and the insecticide use so you can see which is more. We did that so you could see that they use maybe more herbicides, more insecticides, and a lot of times people say well, I want to see your pesticide use and your herbicide use. Again, pesticides is the main heading and herbicides, bactericides, virucides, they all fall under this heading. So, we have to make that pretty clear. This list is only restricted-use pesticides, there are general use pesticides which are not in here. Act 150 covers the reporting of Restricted-Use Pesticides (RUP) sales, not RUP use, but RUP sales records. Again, RUP, restricted-use pesticides.

Mr. Kagawa: Would it be difficult for your Department to also in the future, if the Council should pass something, to know how much is used not only how much is purchased?

Mr. Matsuda: Per Statute we only collect sales records. If it was the legislature saying that you have to collect use records, then we would have to go through the whole process, rule making, and all of that. Right now we are only required to collect sales records.

Mr. Kagawa: I see. I am done for now. Wait, one last question. Basically, just describe the job of our inspection, when we go out. Just a rough detail. We go out, we maybe follow a Pesticide Operator on a spray? We observe the wind conditions? What do we do in general?

Mr. Matsuda: We have multiple types of inspections. But if you are talking about roadside, they are going to vary depending on the type of inspection. We have a neutral scheme number one. But we are working at a seed corn company and again, if it is not a complaint but just a routine inspection, we have a list of the Certified Applicators and within a five (5) year period each applicator is to be inspected. We look for the use records. By law they have to keep the use records for two (2) years at the site. Our Inspector goes out and what we do is we look for something that was used in the past thirty (30) days and that is called a Tier 1 Inspection, used in the last thirty (30) days. Then we ask what did you use it on? Where are our records and from the label we look at dilution rate, site, the proper protective equipment, posting requirements, and training. I do not know if you are aware of Worker Protection Standard (WPS), any pesticide used in the agriculture industry that has this label, again, I always say the label is the law. You have to comply with that label. If it says you have to wear a certain protective equipment, the Tyvek suits that people refer to as hazmat suits, they have to wear that and it is for a reason. It is to protect the applicator or the person that is mixing the pesticide. They can only again, according to the label, apply so much pesticide per year, per acre and they log this in. The records are available for two (2) years.

Mr. Kagawa: Tom, sorry to stop you now. But my time is up and I want to be following our rules. Thank you, Mr. Hooser.

Chair Hooser: Thank you, Mr. Kagawa. Just a reminder, there are two (2) ten (10) minute segments for all the resource people also. Councilmember Rapozo.

Mr. Rapozo: Was that his ten (10) or five (5)?

Mr. Kagawa: My ten (10).

Mr. Rapozo: Okay. I think I will touch on a lot of what he is asking, but what is the staffing again for Kaua'i, one?

Mr. Sahara: One person, yes. For quite a while we had one (1) person. That person changed jobs, so we did not have anybody here for a while, for several years. During that period I actually came from Hilo to Kaua'i once a month to do inspections for a period of four (4) or five (5) of years.

Mr. Rapozo: I do not mean to cut anybody off, but I want to get all of my questions in ten (10) minutes so I am going to try because I think a lot of problems that we are facing is because of what I am talking about, staffing and inspections. It is simply not being done and that is what causes the concern, I

think, in the community. I will not say it is not being done, but it is not being done I think to the level of satisfaction of the people that live in that area. Just from what I am hearing right now, I think you said inspection not complete does not get logged or it is redacted. What does that mean?

Mr. Matsuda: Cases that are not closed.

Mr. Rapozo: Explain what that is.

Mr. Matsuda: If there is a finding, then we issue a warning notice until a warning notice is issued or the case determined there was no violation, then the case is closed. If there is a civil penalty, we work with the applicator and kind of negotiate the terms of the penalty and until that is settled, and it has to go back to our Attorney General's Office to approve the settlement, the case is still open and we cannot release information on open cases.

Mr. Rapozo: So, the public would not know if there is a violation of any of these labels?

Mr. Matsuda: Ongoing, open investigations

Mr. Rapozo: Wow.

Mr. Matsuda: The document we gave Councilmember Hooser, it did have those inspections on there. But the company, the applicator's name, those were redacted with X's. There is a code there, if you look and there was a cover letter that said C-AG or C-AR, or WPS Tier 1. If you look at the code and at the X's, you could understand these are agriculture inspections still open.

Mr. Rapozo: I understand that, but I guess my concern is if there was a violation, if there was drift, if there was some kind of application that violated the label, how in the world would the community know enough to go get checked? I mean, is there any provision in the State law that would require -- you know, like identity theft? I cannot die from identity theft. But if somebody breaches my information, they are required by law to let everybody know. That is not provided for by our State law right now?

Mr. Matsuda: No. On a complaint...

Mr. Rapozo: I am not talking about complaint, I am talking about inspections. I am talking about an inspection that you folks do, if you come across this violation and it affects pesticides, it affects something that obviously rose to the level of violation, that the community would not be notified?

Mr. Matsuda: Not until we go through all of the documentation...

Mr. Rapozo: Not until you resolve the issue and negotiate a penalty?

Mr. Matsuda: No, no. We have to look at all of the facts coming in from the investigators.

Mr. Rapozo: I understand. You said the State Law requires you to get sales information. That is what the law says, only sales?

Mr. Matsuda:

Sales records of restricted-use pesticides.

Mr. Rapozo: Correct. Does the Law prohibit or prevent you from obtaining usage information? I understand you already collect that in your inspections.

Mr. Matsuda: Yes, that is only for a snapshot in time. So, only if we did five (5) inspections, that is the only information we would have. If you are trying to get a sense of what is used on an annual basis, you would not have the data.

Mr. Rapozo: Does the State law prohibit your Department from getting that information?

Mr. Matsuda: It is not on our books. If you say prohibit, it does not prohibit, it is just not our books.

Mr. Rapozo: So, your Department could through Administrative Rules or...

Mr. Matsuda: If those Administrative Rules come into play, then we would collect.

Mr. Rapozo: Okay, and that is done at your Department level?

Mr. Matsuda: And at the State Legislature.

Mr. Rapozo: Not through the Legislature?

Mr. Matsuda: At the Legislature, they would have to.

Mr. Rapozo: For the Administrative Rule?

Mr. Matsuda: Yes.

Mr. Rapozo: Okay, and I apologize for going quick. Does your inspections involve any type of sampling of the air and soil or is it specific?

Mr. Matsuda: Soil samples, drift samples.

Mr. Rapozo: You do all of that?

Mr. Matsuda: Yes.

Mr. Rapozo: In your inspections?

Mr. Matsuda: Not all. It depends on the type of inspection. If it is a drift complaint...

Mr. Rapozo: I am not talking about complaints. I am talking about your regular inspections.

Mr. Matsuda: No.

Mr. Rapozo:
inspections?

Okay. Do we ever do relative random

Mr. Matsuda:

Yes.

Mr. Rapozo:
that you are here?

Where you pop up without telling anybody

Mr. Matsuda:

Yes.

Mr. Rapozo:
inspections, and all of that?

Do those inspections do soil inspections, drift

Mr. Matsuda:

No, not necessarily.

Mr. Sahara:

But they can. The EPA actually prefers...

Mr. Rapozo:

I am not interested in what the EPA said.

Mr. Sahara:

No, wait, wait.

Mr. Rapozo: I am interested in what is being done on Kaua'i. I am not really interested in what the paper, books, or Federal law. I am interested in knowing what is being done today on Kaua'i? Is that ten (10)?

Mr. Kagawa:

Five (5).

Mr. Rapozo: That is what I am interested in because the people that are here, they know what the Federal law says. I want to know what have we done or what are we doing at the State level to address the concerns of the public. I am going to keep it to questions because I have comments for later. Now, you talked about the inspections and what I heard from you was that you inspect everything as it relates to the applicator, making sure he has protective equipment and making sure that they are following the label and making sure that applicators are safe. What I have not heard, is how are we assuring that the community is safe in your inspections. I hate to sound like I am attacking the State, but I am because the community has come to us now to do something because the State is not doing it and they are not getting the satisfaction or the comfort that everything is being looked at. I understand you only have one (1) person and believe me, I think I could get the support from the Council to go to the State to do something about that. But even if we had seven (7), even if we had ten (10) inspectors, if your protocol is to only to check the applicator to make sure he is safe, we do not need seven (7).

Mr. Matsuda: Part of that inspection is Worker Protection Standard as the applicator, now we look at the label. Did he make that application in a proper manner? Was the site on the label, dilution rates according to the label? The only thing about the drift is when someone complains and we look at record keeping. Did he log in all of the different Restricted Entry Interval (REI) periods, the posting of an application? Those are critical.

Mr. Rapozo: And these are all based on – let us say you get a complaint and I would be curious to know what the percentage of the complaints that actually get investigated?

Mr. Sahara:

All. We have to go out to every complaint.

Mr. Rapozo: Yes, I know. But like you were coming from Hilo. So, if someone calls today and says my eyes are burning, what is the protocol? What happens then?

Mr. Matsuda: Call 911 and seek medical attention.

Mr. Rapozo: I am not talking about that.

Mr. Matsuda: No, no this is what we do.

Mr. Rapozo: I understand that.

Mr. Matsuda: And then we schedule to come out and do a...

Mr. Rapozo: I understand that. But then it goes to the doctor's testimony where they are coming in, right? Patients are coming in with red, watery eyes. They are burning and they are itchy or whatever. But they have no idea what is going on in the environment around them to even try to suggest what is causing it. So, this is my question, what is the protocol of your Office if a call is made, granted you call 911. You call 911 and you go, whatever. What does the State do as a follow-up to that complaint?

Mr. Sahara: The first thing that we always do is arrange to meet with complainant. We always get a statement first. We meet with the complainant and always meet with the complainant first. The determination is made there because every case is different. So, we would have to see the situation. If there is a farm nearby, we immediately would try and find out who is making the application, determine what is being applied, and if there is suspected drift, you could take a swab from their window or so forth to determine if there was drift onto their property. We have taken samples of people's clothing to see if they claim that they were contaminated.

Mr. Rapozo: And has that been done on Kaua'i in the past?

Mr. Sahara: Yes.

Mr. Rapozo: Have we found drift?

Mr. Sahara: Yes.

Mr. Rapozo: What happens at that point?

Mr. Sahara: Then the report goes to Honolulu where the Case Preparation Officer, the Program Manager, and the Attorney General, they all meet to determine what has to be done. If there is a warning notice, a civil penalty, or perhaps nothing. As the facts gather, we gather all of this information and then it goes to Honolulu and they make a determination what has to be done.

Mr. Rapozo: Typically, what happens?

Mr. Matsuda: Typically, severity of the violation?

Mr. Rapozo: Yes. Let us say that you swab the person's window and it comes back, bingo, drift with some chemical. What happens at that point? You all meet with the Attorney General and then what happens?

Mr. Matsuda: Then it is either a warning notice goes out...

Mr. Rapozo: What does the warning notice say? Warning, you have drift.

Mr. Matsuda: Yes. The applicator, you have violated the label.

Mr. Rapozo: Okay, and then warning I would assume.

Mr. Matsuda: Then the case would be closed and then...

Mr. Rapozo: Is the public notified at that point?

Mr. Matsuda: The complainant is notified when that case comes to Honolulu. They can call our Case Developer to ask for information. Once the case is closed, they can get all the records. But it is a long process.

Mr. Rapozo: Only the complainant?

Mr. Matsuda: Complainant and the general public after.

Mr. Rapozo: If the general public has knowledge about it?

Mr. Matsuda: Knows about it, yes.

Mr. Rapozo: Now, if I live a mile away from the complainant and I do not know the complainant. Sorry for me?

Mr. Matsuda: Yes, unless someone asks for all of the warning notices, violations, and public records.

Mr. Rapozo: I think I have the picture and I think I know where I need to go.

Mr. Sahara: The sample results...

Chair Hooser: Thank you. We are done with that for now. Thank you, Councilmember Rapozo. Again, there are lots of people here, a good line of questioning and I appreciate it. Councilmember Nakamura.

Ms. Nakamura: Thank you for being here. I have a question of how often – you said fifty-three (53) inspections of the seed corn companies over the past two (2) years?

Mr. Matsuda: That is total inspections.

Mr. Sahara: Yes, that is.

Mr. Matsuda: Agriculture inspections.

Ms. Nakamura: Agriculture inspections. Is that five (5) times? If we have five (5) companies is that five (5) times a year? How many times a year does a seed corn company get inspected is my question?

Mr. Sahara: Well, what happens is you take a look at the number of licensed applicators that a place have. So, most of the seed corn

companies actually have quite a few RUP licensees. Everybody should be inspected once in the five (5) years during the time that the license is valid. So, that is actually why the seed corn companies get inspected more than the average farmer. It is because they have all of these different licensees. The twenty-one (21) inspections that you received were for the seed corn companies, correct?

Chair Hooser: I will ask questions when it is my turn. But I have a record...

Mr. Sahara: It is fifty-three (53)...

Chair Hooser: I have a log book of two (2) years and I show much of it is redacted. So, the ones that are not redacted shows seed companies get inspected about three (3) times a year.

Ms. Nakamura: Three (3) times a year?

Chair Hooser: That is what my data shows.

Mr. Sahara: Well, no that is not correct.

Mr. Matsuda: Of closed cases

Chair Hooser: That is on unredacted cases. I would be happy to show you the report. It is your report.

Ms. Nakamura: I think I will just pose this as a question to be sent over. About how many times a year does seed corn companies get inspected by the Department of Agriculture?

Mr. Sahara: The unredacted copy had fifty-three (53) inspections for a two (2) year period. His redacted copy has twenty-one (21) inspections over a two (2) year period, the seed corn companies.

Ms. Nakamura: So, I just want to know per company, what does that translate into? You do not have to answer that now. We will send it over as a question.

Mr. Sahara: I could check it out for you.

Ms. Nakamura: Yes, you do not have to answer it now. The other question is if the pesticide label requires a buffer zone, who does that calculation?

Mr. Sahara: The labels, most of do not have buffer zones restrictions. The only buffer zone restrictions are currently for people using soil fumigants that was just developed in the last year. That is a new restriction. It is for soil fumigant use. So, here we checked and the soil fumigant use is on the sweet potato people on the Big Island.

Ms. Nakamura: Other than the soil fumigants, most of the pesticides do not have buffer zone requirements?

Mr. Sahara: It does not state it on the label directions for the pesticides used. I am not aware of it.

Ms. Zimmerman: Some labels will have buffer zones around water bodies like natural streams, ponds, lakes.

Mr. Sahara: But not a specific distance is listed.

Ms. Zimmerman: It varies depending on the chemical.

Ms. Nakamura: You are saying fifty (50) feet?

Ms. Zimmerman: Yes, fifty (50) feet seems to be the norm that I have seen, but it varies depending on the chemical.

Ms. Nakamura: Is there notification requirements?

Mr. Sahara: For?

Ms. Nakamura: For various pesticide uses.

Mr. Sahara: Prior to use, no, there is not.

Mr. Matsuda: The only use would be on the farm where before you make an application, twenty-four (24) hours, you have to post that you are going to make an application. But again, it would be to the people working on the farm, the agriculture workers, and the handlers.

Mr. Sahara: To let the public know.

Mr. Matsuda: After the spray application, there is a time period, three (3) days. They put the sign, "Do Not Walk In" and the three (3) days after the application, you have to take the sign off and there is another page called the REI, Restricted Entry Interval. Depending on the toxicity of the pesticide you may not enter the treated area maybe up to seventy-two (72) hours.

Ms. Nakamura: Who ensures that that is being followed?

Mr. Matsuda: The applicators of the Restricted Use Pesticides would be applicator and farm management. Again, when they make an application they have to post the sign. So, any worker comes to this board, central notification cite, they look on this date what field is being treated. When they go to that field, they should expect to see a sign at any of the entry points saying "Keep Out."

Ms. Nakamura: When your inspectors got out, do they look for those things?

Mr. Matsuda: Yes.

Ms. Nakamura: The complaints – I wanted to get a sense. Do we have a number of complaints that you have received with respect to the seed corn companies over the past several years?

Mr. Sahara: Yes, we can get you that information. I do not have that with me right now.

Ms. Nakamura: Do you have any sense of the nature of what those complaints are?

Mr. Matsuda: Those would be odor complaints.

Ms. Nakamura: Odor?

Mr. Matsuda: Odor.

Ms. Nakamura: Is that kind of the general theme when you get the complaints? Is it unusual in one part of the island as opposed to other parts of this island, the number of complaints that you are receiving?

Mr. Sahara: It is mainly from that section, from the West Side that the complaints are received.

Ms. Nakamura: The complaints are mainly from the West Side?

Mr. Sahara: Right.

Ms. Nakamura: The complaints are mainly odor related?

Mr. Sahara: For that area, right, correct.

Mr. Sahara: And it is not just the seed companies, just be aware that there are other companies too.

Ms. Nakamura: Could you explain that some more?

Mr. Sahara: Well no, because some of those cases are not closed. They are ongoing and there are cases where there were have been complaints, samples were taken, and it is ongoing because certain residues were found.

Ms. Nakamura: How many ongoing follow-ups of complaints do you have currently?

Mr. Matsuda: Well, we could we have to get you that information because those cases are open and our Case Developer – actually...

Ms. Nakamura: When a case is open, typically how long do they stay open?

Mr. Matsuda: If it is a complaint, those are given high priority. Other cases may go three (3) years because we are so back logged. Just eh last couple of year the Uniform Information Practices Act (UIPA) requests that have come in requires so much time redacting information, it goes to the Attorney General's Office, the other side, they get a chance to say this is confidential business information. They have to run it through their Attorney's Office and we just have the one (1) Case Developer to work on all of these UIPA requests...

Ms. Nakamura: You have one (1) Case Developer?

Mr. Matsuda: ...plus she handles all of the case files from the six (6) different inspectors.

Ms. Nakamura: So, it that one (1) person for the whole island to review these cases?

Mr. Matsuda: One person for the whole State.

Ms. Nakamura: For the whole State?

Mr. Matsuda: Yes.

Mr. Sahara: That is where the big back log is.

Ms. Nakamura: For the whole State to review inspection reports from six (6) inspectors? Wow, that is tough. So, that is why the typical turnaround is about three (3) years?

Mr. Matsuda: Some, not all, depending.

Ms. Nakamura: Not all?

Mr. Matsuda: We try to take care of the no-violations, just review the records. Again, you have to review the records. We look at the photographs, the labels, and everything. Again, if it is civil penalty that has to go to the Attorney General's Office. It goes back and forth, the settlement goes back and forth and that takes a while.

Ms. Nakamura: The warning, the civil penalty, or doing nothing are our options?

Mr. Matsuda: Yes, no violation.

Ms. Nakamura: No violations. Could we ask what the dispositions of cases have been in the last five (5) years from the Attorney General's Office?

Mr. Matsuda: When you say disposition, meaning numbers?

Ms. Nakamura: When the inspection has been done and it has been forwarded to the Attorney General with some recommendation, I assume from your Department, then can we get records on what has happened in those cases?

Mr. Matsuda: If they are closed.

Ms. Nakamura: If they are closed?

Mr. Matsuda: And then a lot of that information again, is subject to that 92F, you will have redacted information. If it is Confidential Business Information (CBI) and Councilmember Hooser knows.

Ms. Nakamura: What has been the typical disposition of these cases? Is there an x percentage that gets a warning and x percentage gets a civil fine?

Mr. Matsuda: On the cases that have been closed, we can go back and look at the numbers and get that to you. On the top of my head, I will not venture a guess for you right now.

Ms. Nakamura: Do they typically get appealed?

Mr. Matsuda: Yes, that is why there is that settlement part, too. You can appeal, definitely.

Ms. Nakamura: You were mentioned Tier 1 and I think your time got cut off.

Mr. Matsuda: And a Tier 2 for the Worker Protection Standard. Use of a pesticide within the thirty (30) day window is considered a Tier 1 inspection and then if we went in and the applicator made his last application forty-five (45) days, that is considered Tier 2 inspection.

Chair Hooser: Thank you. They are going to be heading to the airport. I would like to get every member a chance. They are going to be leaving and I know everyone is supposed to get ten (10) minutes, but I would like to move it as quickly as they can so they can get to the airport and everybody can have an opportunity. Councilmember Yukimura.

Ms. Yukimura: Thank you. You said fifty-three (53) inspections within two (2) years with the seed corn companies.

Mr. Sahara: Right.

Mr. Yukimura: How many were complaint based?

Mr. Sahara: I could count them.

Ms. Yukimura: No. Can you send that in later?

Mr. Sahara: Right, I have the list here.

Ms. Yukimura: Ms. Zimmerman, you work with experimental pesticides and you said that all of the experimental pesticides are actually registered pesticides?

Ms. Zimmerman: Yes.

Ms. Yukimura: They are not new pesticides?

Ms. Zimmerman: No.

Ms. Yukimura: You said something about the inspectors inspect all applications?

Ms. Zimmerman: No, when we issue an Experimental Use Permit we send the information to the inspector on that island or in that County and the user, under the permit, is required to notify the inspector when their first application under that permit is going to be. The inspector will arrange to observe the first application under that permit.

Ms. Yukimura: Are these registered pesticides often are applied for experimental pesticides because they are well known pesticides but they are used on a different crop or something like that, is that the nature of experimental?

Ms. Zimmerman: Yes.

Ms. Yukimura:

What other situations?

Ms. Zimmerman: Primarily it is used on other crop at a different rate perhaps or maybe pre-harvest interval is different.

Ms. Yukimura: Now would you know whether – I do not know if this is the category of experimental pesticides, but there is a lot of concern about pharmaceuticals being injected into GMO crops. Can I get some assurance that none of this is happening in Hawai'i.

Ms. Zimmerman: Well, the Experimental Use Permits we issue are for just pesticide use. We do not regulate that.

Ms. Yukimura:

Who regulates?

Mr. Sahara: I would say United States Department of Agriculture (USDA).

Ms. Zimmerman:

USDA.

Ms. Yukimura:

So, USDA is the regulator?

Ms. Zimmerman: And EPA will also issue Federal Experimental Use Permits.

Ms. Yukimura: They are called Federal Experimental Permits.

Ms. Zimmerman:

Yes.

Ms. Yukimura: Thank you, that is a great clarification. Have any of you read Bill No. 2491?

Ms. Zimmerman:

Yes.

Ms. Yukimura: You have? Do you have opinions which you may want to submit to us later unless you can do it really quickly, on the workability of the provisions?

Ms. Zimmerman: Well, I had one (1) concern in regards to the open air testing the experimental pesticides.

Ms. Yukimura: Yes, I think Mr. Matsuda was alluding to it at the public hearing. Maybe you could clarify that.

Ms. Zimmerman: Yes, because of the language it will also limit the use of minimum risk, 25B pesticides which are used often on organic farming. The citric acid, cedar oil, there are not federally registered so they will be impacted by this language. Another impact would be Section 18, Emergency Exemptions. These are exemptions that we issue in occasion there is an outbreaks or an invasive pest that needs control. They are not technically Federal registrations so they are an exemption from registration. So, because of the language, County of Kaua'i would not be able to have use under that tool.

Ms. Yukimura: That is open-air testing, that is the provision or it is also about experimental?

Ms. Zimmerman: It says in that Section "unlawful to test or use any experimental pesticide" and the definition of experimental pesticide was anything that is not registered by EPA or the use was not registered by EPA.

Ms. Yukimura: I see. We even received a request for an exemption by the Committee on invasive species because they are using experimental pesticides to take care of invasive species.

Ms. Zimmerman: Little fire ants.

Mr. Matsuda: It is a registered...

Mr. Furfaro: Fire ants.

Ms. Zimmerman: Yes. It is little fire ants on the North Shore. They are using it under an Experimental Use Permit to help control.

Ms. Yukimura: In the nature of incoming pests, sometimes it is really important to act quickly and just get to knock it out otherwise once they are spread you are at a point of no return.

Ms. Zimmerman: Yes, so that was a big concern.

Ms. Yukimura: Thank you. On the issue of the amount of pesticides used on this island, we have been looking at sales records. Do you know that there are other ways that pesticides come in besides sales?

Ms. Zimmerman: No.

Ms. Yukimura: Well, then, can we be assured that the sales records pretty accurately reflect the amount of pesticides used?

Mr. Matsuda: Of Restricted-Use Pesticides. Yes, not general use. We have no record of general use pesticides.

Ms. Yukimura: But this Bill only talks about Restricted-Use Pesticides.

Mr. Matsuda: And again, sales.

Ms. Yukimura: The sales records are fairly accurate representative of the amount?

Mr. Matsuda: Being sold.

Ms. Yukimura: But are the sales records accurate of the pesticides used?

Mr. Matsuda: It cannot because a lot of them will store. Some products come in once time a year so they have to buy that otherwise miss the boat and then that sits in the container.

Ms. Yukimura: So, it is not representative of the annual use or the amount of used within a specific time?

Mr. Matsuda: No.

Ms. Yukimura: But is there any other source of Restricted-Use Pesticides other than sales?

Ms. Zimmerman: No. For any pesticide being brought into State it has to be logged in through this sales system that the dealers will report to us.

Ms. Yukimura: Okay.

Ms. Zimmerman: That is a Federal requirement.

Ms. Yukimura: Because in our minds, chemical companies, they might have a huge supply. They do not have to sell it to themselves, they just bring it in, and we would have inaccurate records.

Ms. Zimmerman: No, they would have to purchase it.

Mr. Matsuda: The dealer is also a RUP dealer by the State.

Ms. Yukimura: Now, on this information that you have given us, am I reading it right? So, one is tons and you have shown golf course use of herbicides, insecticides, and pesticides but that is in pounds, not tons?

Mr. Matsuda: Right.

Ms. Yukimura: So, it is a much smaller quantity?

Mr. Matsuda: Well, on the bottom we calculated that on the first sheet, we broke it down.

Ms. Yukimura: Right. I think that is it right now. Thank you.

Chair Hooser: Thank you, Councilmember Bynum.

Mr. Bynum: I have a couple of quick questions and I am going to ask Mr. Smith. Is Kyle Smith still here? Somebody find him for me.

Ms. Yukimura: He is right there.

Mr. Bynum: Just looking at...

Chair Hooser: Before they start, I was going to tell the Department of Agriculture is finished, Mr. Smith will come up and if you could hang around for a little bit because there are two (2) other Councilmembers that I am sure will want to ask questions. Thank you. Go ahead, I did not mean to cut into his time.

Mr. Bynum: I will try to be quick here. On the chart you have given us, you have given us – and I appreciate these are active ingredients. But your average for three (3) years is 9.89 tons, correct?

Mr. Matsuda: Right.

Mr. Matsuda: 9.89?

Mr. Bynum: The average use over three (3) years is 9.89 per year.

Mr. Matsuda: Yes.

Mr. Bynum: With 11.3 last year.

Mr. Matsuda: Right.

Mr. Bynum: And three (3) year total of 29.67 tons.

Mr. Matsuda: Correct.

Mr. Bynum: I think these are numbers that we can take to the bank. The Bill originally said 3.5, then we did the formula, and we did not know what you know about active ingredients. So, thank you for this very much. It looks like Lorsban is a very highly used application as is Atrazine and so I want to focus on Lorsban for a minute because I started reading labels a few months ago when everybody kept saying the label is the law. The Lorsban label was really interesting to me because the EPA changed the rules in 2005, right? My reading of that label says it is inappropriate to apply this in any section that will have any exposure to children, have I got that right?

Mr. Sahara: I would have to see the label.

Mr. Bynum: According to the label it is inappropriate to apply this in any fashion that children will be exposed and that change happened in 2005. Are you familiar with what I am talking about?

Ms. Zimmerman: New registration, yes.

Mr. Bynum: Because this chemical is banned in most of the worlds and this is one (1) of the three (3) chemicals that was found in the air at Waimea Canyon School. To me, that says the label has been violated and to me that would be a very serious cause of concern when this particular chemical has been sorted out as a source of problems for prenatal and children and it is in the air at Waimea Canyon School. Should the State Pesticide Branch not be concerned about that?

Mr. Matsuda: Yes, should be. I think also the Department of Health should be looking at this.

Mr. Bynum: Okay, I just wanted to ask that question.

Mr. Sahara: Actually there have...

Mr. Bynum: You mentioned a buffer zone for aquatic, fifty (50) feet on some of the labels, is there any requirement for the body of water that is required? It is a river, an irrigation ditch, how do you determine where that applies and where it does not?

Ms. Zimmerman: The labels will say things like streams, rivers, lakes, natural ponds, that is the type of language it uses.

Mr. Bynum: So, it will have some descriptive language?

Ms. Zimmerman:

It will have all of it. Yes.

Mr. Bynum:
for instance?

So, that would not include irrigation ditches

Ms. Zimmerman:

No, not normally.

Mr. Bynum:
water, correct?

Or dry gulches? It would be active bodies of

Ms. Zimmerman:

Yes.

Mr. Bynum:
talk to Kyle Smith who is on our list.

That was all the questions. I was hoping to

Chair Hooser:

He is there.

Mr. Bynum: Oh, I am sorry. Mr. Smith, could you just introduce yourself and then in the discussion that we had recently, just go over from your perspective, the community's relationship with Pioneer over the last few years as related to dust nuisance, grading and grubbing, and those kind of things?

KYLE SMITH: Sure, I would be happy to. Again, thank you for allowing me to speak. As you said, my name is Kyle Smith. I am the Attorney for Waimea residents or residents in the town of Waimea. It is approximately, I would say five hundred (500) to six hundred (600) people if you counted the actual people in the homes, maybe one hundred fifty (150) people on caption of the lawsuit. One of the big issues, there are two (2) really. There is dust, but also pesticides and one of the purposes of the litigation was to figure out what was actually being used in the community. So, as far as I am aware the only real concrete evidence out there as far as how these pesticides are actually being used on Kaua'i is the information that has come out of lawsuit other than the restricted use sales records kept by the State. I am happy to walk through that with you to the extent you want me to. Your specific question was the actual history of the relationship between the two.

Mr. Bynum:

Very briefly.

Mr. Smith: Very briefly, we got involved three (3) years ago. It followed really from dust impacts, people smelling chemicals in the community and being upset. We spent a year trying to work things out with Pioneer before we brought the litigation. In large part it was for violations of Kaua'i County Ordinance No. 808, the Grubbing and Grading Ordinance with there being actually violations with the Dupont Pioneer fields back in 2010 and failure to follow their conservation plan. That was sort of the original issue that was announced by the County and shortly after that is when we brought the litigation itself. Since that time, we have been working to figure out what kinds of pesticides were used, the frequency of the usage, etcetera?

Mr. Bynum:
this along.

Let me do questions and answers to move

Mr. Smith:

Sure.

Mr. Bynum: When you are doing grading and grubbing, an alternative for farms is what is it called? A conservation plan?

Mr. Smith: That is right.

Mr. Bynum: Can you explain that process and how it has gone on Kaua'i in relationship to the seed companies.

Mr. Smith: Sure. Essentially, grading and grubbing is turning over the land. So, when you remove vegetation, you are supposed to have a grading permit. So, if you are in the construction process you have to go get this permit. If you are an agriculture operation, you can get an agricultural exemption. In order to get that exemption you have to have a Conservation Plan that is approved by the West Kaua'i Soil and Water Conservation District for the part of Kaua'i that your operation is on. There is an actual Conservation Plan in place that is supposed to lay out the best management practices for how do you conserve the land, how do you avoid erosion, and there are specific things called out in that plan. So, once that plan is in place, and in this case the operations started in 1998 when the lease started, there was no Conservation Plan approved and in place until 2002. Then later on, additional acreage was added to the Waimea Research Center, another one thousand (1,000) acres, and there was a much later plat that was put into place after the County of Kaua'i issued its violations.

Mr. Bynum: Tell me more about why the County of Kaua'i issued violations?

Mr. Smith: Well, the County of Kaua'i might be the best people to ask about that. But specifically, there was runoff at the Pākalā surf break that surfers were complaining about. They went to the County and I believe there were repeated complaints and the County Engineer finally investigated and found that DOW Agrosience, I believe, and also Dupont Pioneer were essentially working or grubbing land, plowing land, etcetera, farming without these conservation plans in place and then notices of violation were issued at that point in time shortly thereafter.

Mr. Bynum: Switching gears really quick, part of your lawsuit has been an attempt to get actual application data.

Mr. Smith: That is right.

Mr. Bynum: Not what was sold, but what was applied, what time of day, and how much quantity? You have recently received some of that. Could you tell us briefly what it took to get that information?

Mr. Smith: It took several years of litigation is what it took. We requested that originally. Some was provided, but it was all deemed confidential. We challenged that and eventually that confidentiality was lifted by the company and we have since been trying to work through it. I can put it in condensed format. There are lots of ways to look at it. You could look at it by class as far as the different types of pesticides that are being used. You can look at it in terms of frequency. Sixty-five percent (65%) of the days of the year on average, so about two hundred forty (240) days, they are applying pesticides. You can look at the combinations that are applied. You could look at it by on the application days, the average is between eight (8) and maybe sixteen (16) applications per day of pesticides on these research fields. Most importantly though and I think what is most relevant for this discussion is the total usage. Recently, the industry statistics I saw put out at the public comment was that Kaua'i was using about one (1) pound per acre, per season and that the mainland uses about two (2) pounds per acre and I

have these charts to show you. Again, I believe it is a seed company graph. The reality is if you double that because we have multiple seasons, we have three (3) seasons. Typically, two (2) seasons are planted, you are looking at closer to two (2) pounds per acre, that puts us in the upper-level of the mainland usage. Those are industry numbers, but if you look at Dupont Pioneer pesticide spray records that we have actually found in the lawsuit and you look at Restricted-Use Pesticides, they have come down sharply since the lawsuit. I do not want to take that away. So, once we sued the usage is far less today than it was. But in 2010...

Mr. Bynum:

Quickly.

Mr. Smith: Yes, 2010, 2009 you are looking at close to twelve (12) pounds per acre and the average usage, and this is Restricted-Use Pesticides, over that same time period would be eight (8) pounds per acre. Now, at two (2) pounds per acre which is again the number put out by the industry I believe, you are in the highest average in the United States, in the mainland, across those years. At eight (8) pounds per acre, ten (10) pounds per acre, eleven (11) pounds per acre per year, you are many, many times that.

Mr. Bynum:

Thank you for supplying the data.

Mr. Smith:

Of course.

Mr. Bynum: It is very voluminous, it is very detailed, and data analysis is not a strength of this County. I just want to tell you. But we need to do this analysis. From your initial analysis...

Chair Hooser:

That is it.

Mr. Bynum:

That is it?

Chair Hooser:

Yes.

Mr. Bynum: applications on average per year?

One sentence. Two hundred forty (240)

Mr. Smith: applications on those days.

Two hundred forty (240) days, multiple

Mr. Bynum: pesticides are being applied to the same fields?

Two hundred forty (240) days out of year,

Mr. Smith:

At Waimea Research Center, on average.

Mr. Bynum:

Is there...

Chair Hooser: minutes.

Thank you. You will have another ten (10)

Mr. Bynum:

Are there rules about frequency, Thomas?

Mr. Matsuda:

Yes on the label. Even the field...

Chair Hooser:

We are finished with this.

Mr. Bynum:

I have run out of time.

Chair Hooser: We are finished with this ten (10) minutes. We will have another ten (10) minutes in a second, if you could hold on for a second. We will see if council Chair Furfaro has questions.

Mr. Furfaro: Thank you. First of all, Mr. Smith, thank you very much. We have gotten the material that I met with you and Mr. Jarvis on and I will make sure to share that with all the members. So, I just wanted to say thank you.

Mr. Smith: Of course, you are welcome.

Mr. Furfaro: For the others here, I want to reference the Atrazine issue. Are the three (3) of you from the State aware of the passing of House Resolution 100, Draft 2? If not, I am going to give it to you today so can you can take it with it you. I have identified the seven (7) unit synopsis from myself which this Resolution from the State says that they are going to pursue and is being requested from the Director of Agriculture as well as the Director of Health to file a report to identify any new proposed legislation as well as identify partnership activities and I assume with the other political subdivisions, by October 31, 2013, that is eighty-eight (88) days from now. As the Chairman of the Council, I have gotten no information from either of those State Departments. Are you familiar with it?

Mr. Matsuda: I am not familiar. We have not even gotten a call from the Department of Health and I believe that they are the lead agency on that Bill.

Mr. Furfaro: Yes. The Bill itself talks about the fact that the Department of Agriculture flat out in the Resolution says they do not provide enough staffing to the State to actually do this testing. I am thinking if you want us to be partners, that is a key item that you could approach us on based on the fact that we may be able to identify some type of stipend for the State to assist them. But they currently do not test because of the lack of inspectors, that is very, very concerning for me. The guidelines here are actually set by the EPA and there should be some kind of compliance issue especially dealing with bodies of water which were explained to us earlier and the Director of Health was going to draft some ideas of how we could partner on this by October 31, 2013. I would like you to do whatever you can in your powers to get us current. This is disturbing that we have not had any dialogue since the last legislative session and House Resolution 100, Draft 2, has passed. So, based on that it is hard for me to believe that you are doing the optimal level of enforcement when the Resolution clearly says that you have never been staffed appropriately. I would like to hear back from you, if you could answer me. I will give you this document and I have others. Where are we going with this? What are the desired outcomes? What is the vision for the State in getting us in compliance with what clearly the FEDs, through the EPA, allocates as a requirement? We would be glad to *kōkua*, but nobody is sharing anything with us.

Mr. Matsuda: Is the Atrazine being registered right now?

Ms. Zimmerman: It is under review right now, yes.

Mr. Sahara: But actually, one another thing. This year...

Mr. Furfaro: I am sorry. I am sixty-four (64) years old, you need to speak up.

Mr. Sahara: One of the things since all the Trizines were becoming very important subject, I had all inspection staff on outer islands check on the amounts that were purchased and review how much is in storage and see how much was applied to make sure that these numbers match up. So, we did a specific review of Trizine, besides Atrazine, there are other products involved. There are (inaudible) and some others.

Mr. Furfaro: But I want to be clear with you, this grading and grubbing Bill was staffed in 2002.

Mr. Sahara: Right, this was just passed.

Mr. Furfaro: I was on the Council with two (2) of my other colleagues. I want to hear from you, what in the way of best practices based on this resolution by the State, you need from us so that we can work together in partnership on resolving this issue? I hope you understand where I am coming from. Resolutions, they do not have the power of law, but certainly, they should a vision of what our commitment is to get there and to read something as clear in the State Resolution that says staffing guides are the issues why you do not enforce. Well, let us get ourselves to a point that we can enforce and how can we help? I am sorry Mr. Hooser that was a statement versus a question. But I am going to give you my document to take back with you. Thank you, Committee Chair.

Chair Hooser: Thank you, Chair Furfaro. Clearly, a little leeway on the questions. We would like to focus on the issue, but statements like you just made were perfectly appropriate. I will ask my questions now and I will try to be brief. Earlier, Councilmember Rapozo asked about where drift was found in a certain and you said, "Yes, it was found."

Mr. Sahara: Yes.

Chair Hooser: Then the question was, is the public notified because I would imagine if it is found on one (1) house then it would be found on other houses, and the public is not notified when you find drift, yes or no?

Mr. Matsuda: No.

Mr. Sahara: Well, the public is not notified.

Chair Hooser: Does the public notify...

Mr. Sahara: The person...

Chair Hooser: My question is about the public. Again, I do not mean to cut you off, but we have to move forward. My concern is about the public not about the applicator. So, the public is not notified if drift is found and you hear a lot that the label is the law, the label is the law. The law says no drift and drift is found. The second one is this difference if numbers between eighteen (18) tons and nine (9) tons. I am a little taken aback when I use the information given by your Office to me that says Lorsban or whatever, all of these chemicals. It is in gallons, I totaled it up, I compute the tons, and then your Office says it is only the inert ingredients.

Mr. Matsuda: No, it the active ingredients.

Chair Hooser: I mean the active ingredients. When I say eighteen (18) tons of pesticides, I mean eighteen (18) tons of Lorsban and all of these other chemicals and that is an accurate statement, I believe, because that is what gave me. To subtract out the inert ingredients and then only count the rest when your numbers give me the full amount, I think is disingenuous quite frankly.

Mr. Matsuda: Well, the active ingredient is the pesticide that does the killing.

Chair Hooser: But...

Mr. Matsuda: So, that is what we are stating.

Chair Hooser: But pesticides are bought and sold by names and I counted up the number of gallons and pound by those pesticides by names. So, I take it a little personal when you question my numbers when I used your numbers to calculate the gallons, that is that part. The inspection log – I got an inspection log from your Department. It shows two (2) years of all of the inspections. It took me a long time to get this log. I had to wait and wait and wait. A two (2) year total, one hundred seventy-five (175) total inspections in two (2) years. One hundred seventy-five (175) total inspections in two (2) years. You had mentioned fifty percent (50%), I counted just under fifty percent (50%) that are redacted. Redacted so that we do not know and those are violations or enforcement actions that we do not know what those enforcement actions are. They could be little or they could be big. I have asked the Department to at least give me the enforcement actions. Do not give me the companies, just give me the action so we know what is going on and I have gotten no answer. You take two (2) years of inspections, it comes to me –each of these main companies that we are talking about is being inspected 3.625 time a year if you subtract out the redactions, three and a half (3½), less than four (4) times a year because that is all the information that I have. So, I have the information here. I will be sharing it with my colleagues on Council and just to clarify, there is no record of general use pesticides, is that correct?

Mr. Matsuda: Correct, only in inspection.

Chair Hooser: If we are using eighteen (18) tons of Restricted-Use Pesticides, could you estimate at all, pick a number of how much pesticides are being used, more or less? You do not know huh?

Mr. Matsuda: No.

Chair Hooser: So, the State of Hawai'i does not know how much general use pesticides are being used in the State of Hawai'i?

Mr. Matsuda: If you are looking for a ratio RUP to general use, it is hard to say. It depends on the company.

Chair Hooser: In round numbers?

Mr. Matsuda: I can say that the...

Chair Hooser: Sixty (60) / forty (40), is that what you said?

Mr. Matsuda: The homeowners also use general use pesticides like the agriculture in general.

Chair Hooser: The point is the State of Hawai'i do not know how much general use pesticide is being used, is that correct?

Mr. Matsuda: That is correct.

Chair Hooser: Thank you very much. I hated to rush, but I had to. You mentioned the experimental use pesticides in the language.

Ms. Zimmerman: Yes.

Chair Hooser: Would you be willing to work with us to amend the language to cover those kinds of incidents?

Ms. Zimmerman: Yes.

Mr. Bynum: Thank you.

Chair Hooser: I really appreciate that because we are trying to get a good Bill. Thank you very much. I am going call up somebody else now. I believe Dr. Carl Berg if you could and Paul Towers from the Pesticide Action Network. Kyle, you can stay if you want. There might be some questions. Again, we only have ten (10) minutes so I am kind of ripping through this. Dr. Berg, you can tell me a little bit about yourself. But you have recently, it is my understanding, done some testing around our island and you have worked with the Department of Health testing various waterways for chemical residue or pesticide residue. Could you tell the Committee what you have found?

DR. CARL BERG: Yes, my name is Dr. Carl Berg. I am a marine biologist. I have done water quality studies since about 1966 and on Kaua'i, since 1991. Most of my work has been done with the Department of Health in looking at bacteria loads, nutrients, and things like that. But because of community concerns, I started looking at pesticides and specifically there is a strip test, a little dip-stick test by a company called Abacus that allows you to go and monitor for Atrazine and one of its derivatives at the EPA level of three (3) parts per billion. I went out and tested twenty-six (26), I believe, different streams and ditches around the island here and found positive results in a number of those. I am just looking for my notes here, positive results were found in a ditch by McArthur Beach Park at Kekaha in the ditch there, Waimea River, Hanamā'ulu Stream, Nāwiliwili Stream, and Waipolili Stream which is at Mahaulepu. So, all of those gave me a positive result which then lets me focus further on where we should be starting to take water samples. But I am very cautious about this because when you take a sample, I am taking just a tiny drop of water from a river and it is very difficult to say that entire river is polluted and it is dependent upon when it was last sprayed, when did it rain, all of those other things. If I get a positive result, I know that there was Atrazine there in that piece of water at the time that I took it. It may not be there all of the time. If I get a negative result it means there was nothing there at time I took it, but it could be tomorrow, it could be right after it was sprayed or something like that.

Chair Hooser: Before we ran out of time, could you mention the Department of Health?

Dr. Berg: Thank you. So, that is what I personally have done with Surfrider Foundation and beginning to test that. However, since 1991 I worked for the Department of Health and then I have been an Informal Advisor to the Department of Health and I have contracts to do water quality

studies from the Department of Health. As such, I am shown some of the data that they get and they ask my advice. The Department of Health, last September took part in a nationwide survey looking for all sorts of pesticides in personal care products and they choose – I was not party of where they tested. But they did test for approximately eighty-nine (89) different chemicals throughout the State and they did find Atrazine in the waters here in Nāwiliwili and Hanamā‘ulu. They found Carbaryl, an insecticide, in Nāwiliwili. They found another group of wetting agents and I do not know how to pronounce this properly, noninophenols in Nāwiliwili, Hanalei, Wailua, and other places. Then they found nicolene which is a general product that is used in lots of different pesticides and insecticides.

Chair Hooser: I am going to interject for a second just to be clear. Those are not supposed to be there, is that correct? They are not legacy chemicals that have been left over for years and years?

Dr. Berg: No, those chemicals should not be there in the natural environment. Whether or not they are legacy, I cannot determine, but they should not be there. What this means is that we already have contaminated our waters. Our waters are already contaminated with these pesticides. I cannot, in this case, identify exactly what the source is or when it was put in there, but it does give us caution that we should not be adding anymore to already polluted waters. There is data out there that these pesticides, everything from glyphosate to Atrazine and everything, destroys the fishes in the streams, the brine shrimp, and the little things like that. So, there is deleterious effects on the environment through the whole food chain by finding pesticides in the waters, in our streams, and our ditches on this island.

Chair Hooser: Thank you very much. This is you new information that I thought was important to get out. I apologize to Paul Towers from the Pesticide Action Network that I have not been able to ask you questions, but perhaps other members will be here. You flew all the way from the mainland to be here. That is the end of my ten (10) minutes.

Ms. Yukimura: Could we put that in writing?

Chair Hooser: So, we will go with Councilmember Kagawa and it has been requested, Dr. Berg, if you could provide in writing what you just told us also.

Dr. Berg: I would like to add that I did send in testimony personally that you all should have that does mention the fact that these pesticides had been found and that I had done some other testing.

Mr. Kagawa: Dr. Berg, you recommend we, as a County, that we pass this Bill?

Dr. Berg: I highly recommend that you pass this Bill in part. I cannot know what to test for if you do not tell me what you are using.

Mr. Kagawa: Well, so you do work with the State Department of Health though?

Dr. Berg: I have contracts working with the State Department of Health and I do it also on a volunteer basis.

Mr. Kagawa: So, have you alarmed the State Department of Health that you feel there is a big problem with our waters, that perhaps they might contacts the State Department of Agriculture to maybe try and monitor some of the agriculture business or do you think we should just create a whole new County Department that would better know what the State Department of Health and the State Department of Agriculture would know?

Dr. Berg: I think it is obvious that the State Department of Health and State Department of Agriculture are not funded to do the type of inspections that is required.

Mr. Kagawa: I have another question. Kyle, the Pākalā incident with the surfers –because I have surfed Pākalās from the early 1970s and the water there was always brown.

Mr. Smith: Yes.

Mr. Kagawa: Did this complaint come because they noticed the water being browner?

Mr. Smith: I did not make the complaint so I cannot answer.

Dr. Berg: Could I interject here?

Mr. Kagawa: Go ahead.

Dr. Berg: The reason I interject here is I am one of the parties who made the complaint because the surfer communities were getting no action out of the County and so they asked Surfrider if we would file a complaint and talk to the County. The people there saw the open fields without any ground cover and we then had the heavy rains in November. It all washed down and not only was the water muddy, but the roads were covered and fishermen were restricted from going in that area. At that point, I hired an underwater photographer diver to go out and look and found out that the whole ground was covered with mud. The lobsters were walking around covered, there were no holes. They were covered with mud. This information then was given to the County and we asked the County Attorney to please look into this and at that point we found that the agriculture companies did not have a Grubbing and Grading Permit and they did not file an exemption for one through the agriculture exemption filing of conservation plan. So, they were obviously not following best management practices by opening up this bare land and they were in violation.

Mr. Kagawa: Kyle, when they did the tests, what did they find?

Mr. Smith: Which test? The Waimea Air Quality Test?

Mr. Kagawa: No, the Pākalā surfers. Did they do a test and found contamination in that water there?

Mr. Smith: No, I do not believe so. I am not sure.

Mr. Kagawa: They just found that they should have applied for the Grubbing/Grading Permit.

Mr. Smith: They documented a huge amount of mud washed off – more than the sugar plantations ever did washed off in that event and that they found that they had no Conservation Plan and no permit.

Mr. Kagawa: The second thing, in regards to where we are at? I do not know how much you want to disclose on this issue, but where are we regarding the Waimea lawsuit against Pioneer? What stage? How long do we expect a resolution to this?

Mr. Smith: It is a good question. We are in Federal Court on O'ahu. There are some things, a lot of things that I cannot disclose frankly. But as far as timing-wise, this piece of the litigation, I think maybe by next year, next summer. There is a trial date and we will see if those dates hold.

Mr. Kagawa: For me, I think that result of that lawsuit will give us a lot of direction as to where government needs to be doing more.

Mr. Smith: I have got to be honest with you, lawsuits look at different things than what government looks for.

Mr. Kagawa: I understand.

Mr. Smith: So, protecting that community on all these different important issues, litigation cannot do everything for everybody.

Mr. Kagawa: I understand, Kyle. But my thing is that I grew up on the West Side and we have had sugar cane. The seed company was operating there before we had the sugar cane.

Mr. Smith: That is right.

Mr. Kagawa: There was not much buffer zones in the past.

Mr. Smith: You are right.

Mr. Kagawa: And rules against spraying during windy days. I mean, there were none back in the old days.

Mr. Smith: I agree with you.

Mr. Kagawa: Like I said, it does not mean that we do not need new regulations, but I think the lawsuit will give us some direction from a – a legal ruling always gives you directions. If you get sued for something, you are not going to continue to do the same thing, right? You are going to make sure your company can avoid those rulings against you, right?

Mr. Smith: I agree with you. But also, if this was sugar cane, you would not have multi-generation families, people who have lived their whole lives through sugar cane, would not be in this lawsuit if what was going on was just sugar cane continued. This is different and everyone here that knows our clients, I think knows that what is going on the West Side is different.

Mr. Kagawa: Thank you, Kyle. Carl, we always hear Atrazine the most important. Do we know if the sugar cane companies used Atrazine in past?

Dr. Berg: I do not know the answer to that. I think that they did, but I am not an expert on that.

Mr. Furfaro: They did.

Ms. Yukimura: They did.

Mr. Kagawa: It would be difficult to say how much is attributed to the sugar cane and how much is attributed to the corn seeds, right?

Dr. Berg: As far as I know with the testing available, it would be hard to say.

Mr. Smith: Actually the life span of Atrazine is quite short. So, in fact it only stays in the water system a relatively short period of time depending on what the make-up of the groundwater is or the surface water. It is a relatively short time. So, actually you are likely not seeing...

Mr. Kagawa: Short meaning how long?

Mr. Smith: It depends on many different factors, right? So, with the make-up of how it percolates down and where it sits. But it is a matter of months rather than usually a matter of years. It is likely not legacy from sugar cane.

Mr. Kagawa: And the test for positive is how much parts per billion?

Dr. Berg: The test I used was three (3) parts per billion.

Mr. Kagawa: Can you quickly describe that test? You take a drop and you put in on a...

Dr. Berg: On a little dipstick and it changes colors and you compare the two (2) bands and whether those colors are equal or one is darker than the other.

Mr. Kagawa: Thank you, folks.

Mr. Smith: Thank you.

Chair Hooser: Councilmember Rapozo.

Mr. Rapozo: Thank you, Mr. Chair. I have a question as far as Atrazine, it does not last long in the water, but what about in the ground?

Mr. Smith: In the groundwater?

Mr. Rapozo: In the soil?

Mr. Smith: It depends. Again, many of these pesticides there are many factors at play, but the most critical concern is around water. Soil is of much less concern than water.

Mr. Rapozo: No, no. But if it is in the soil and runoff causes it to go into the water, that is what I am talking about.

Mr. Smith: I see.

Mr. Rapozo: I am not talking about the dirt.

Mr. Smith: Yes. What its fate transport is?

Mr. Rapozo: I am trying to figure out what the life of this thing is in the ground.

Mr. Smith: Yes. Again, it is many factors at play so it is hard to say specifically. But it tends to be relatively short-lived compared to many of the other legacy pesticides you see like arsenic that is left over in many old sugar mills, for example.

Mr. Rapozo: So, you do not know how long?

Mr. Smith: It is a matter of more likely months than years.

Mr. Rapozo: In the ground?

Mr. Smith: In the ground and the water.

Mr. Rapozo: I am not talking about the water, ground. If the plantation had sprayed Atrazine before they closed, is there likely to be Atrazine in that ground today?

Mr. Smith: Likely not, no.

Mr. Rapozo: Dr. Berg, on your testing of the streams, did you test any other streams? Did you test Hanalei Stream? Did you test Keālia? Did you test any of the other streams?

Dr. Berg: I did. I do not have...

Mr. Rapozo: It is either yes or no.

Dr. Berg: The answer is yes. I tested twenty-six (26) and only the ones that I mentioned came up positive.

Mr. Rapozo: Those are the only ones that came up positive?

Dr. Berg: Yes.

Mr. Rapozo: I actually did witness that with my friend in the back, now I forget your name. Ned brought that test you talked about to my office with a sample of water. So, I got to witness the positive reading right before my eyes in my office within ten (10) minutes and I believe that came from the Second Ditch in Kekaha, the stream there. That is all I have. Thank you.

Chair Hooser: Councilmember Nakamura.

Ms. Nakamura: Thank you all three (3) of you for being here. Dr. Berg, thank you for your ongoing work with stream collection data which I know you have been doing it for a long time on Kaua'i. So, thank you. I wanted to more about we do have a list of Restricted-Use Pesticides that are being used by the seed companies primarily on the West Side of the island. It seems that this one test you did for Atrazine really needs to be – it should be applied to all of these Restricted-Use Pesticides or the ones that are most prevalent.

Dr. Berg: Yes, the problem is the cost and there are two (2) cost factors. One is how accurate, how many parts per billion or tenths, the second is how many are you looking at? I should add I am not only concerned about restricted use. One of the things that may be most detrimental is something called glyphosate, which I believe is a general use. Its surfactant has been found to be dangerous in stream waters. There are lots of different chemicals. In general, I would say it costs about two hundred (\$200) per water sample per test. So, I hear today there were eighteen (18) different restricted use chemicals, eighteen (18) times...

Ms. Nakamura: Twenty-five (25) is on this list.

Dr. Berg: ...two (2), one hundred...

Mr. Furfaro: Excuse me one moment, they are trying to get your attention.

Chair Hooser: We might have to take a break. We are going to take a five (5) minute break. I apologize for the interruption, but we need to take a break.

There being no objections, the Committee recessed at 3:38 p.m.

There being no objections, the Committee reconvened at 3:50 p.m., and proceeded as follows:

Chair Hooser: Just a little on the process, we are going to proceed the same way that we are doing and the members are aware that there are other resource people in the audience. We are primarily focused on the science and medical. Dr. McHughen, is that right? Why do you not go ahead and bring a chair up. I think you are from the mainland and you can sit down next to Kyle here. I understand that you are a Plant Pathologist working on behalf of one of the seed organizations so I want to make sure – you are not. But you are here anyway so we want to give you the opportunity if any members have questions of you. There is also Don Heacock, State Aquatic Biologist in the audience. We have Hector Valenzuela. The University has done a lot of work in this field. So, if any members want to call other resources up to ask some questions, please do so. We intend to finish this round of questions, it is my understanding if the members want to do differently we can, and then we are going to take maybe an hour of public testimony and then we will probably be going into recess until August 13, 2013 because it is going to go too long and we want to have some really quality discussions with industry representative, the Farm Bureau, and others that are here and we will not be able to do that because of time constraints. Members of the public, I apologize. We will try to get through an hours worth of testimony and then we are going to move on. So, who is the last speaker? Councilmember Nakamura. Before you were so rudely interrupted by that.

Ms. Nakamura: I guess I will ask the question to Dr. McHughen. Thank you for being here from University of California – Riverside. I wanted to ask you about the protocols of regulating GMOs. What is the process that is involved?

DR. ALAN MCHUGHEN: I am sorry for which?

Ms. Nakamura: The process for regulating GMOs?

Dr. McHughen: For safety in the United States (U.S.)?

Ms. Nakamura: Yes, and what agency oversees that?

Dr. McHughen: Well, there are three (3) agencies. It is overseen most immediately by the White House through the Office of Science and Technology Policy who developed a framework back in 1986 and that has been the structure that our regulatory agencies have used since then. The primary agencies are USDA, Food and Drug Administration (FDA), and EPA. You have heard something about the laws this morning, FIFRA in particular, that is used by EPA. But actually that is one of the minor ones and when you get into discussions – I am not a lawyer by the way. But I have worked with lawyers and I have worked with the regulatory system so I know something about how the regulations are put together. But when you talk to your legal advisors, you want to find out how your Bill jives through the Plant Protection Act particularly because that is the major one that USDA uses and all of these crops that you are dealing with have gone through rigorous oversight particularly by USDA. All of those agencies are involved. U.S. EPA is the least important actually because there are some GMOs in commerce that did not have to go to EPA for regulatory oversight, but they have all gone through USDA and FDA, all of the food GMOs in the U.S. commerce. I have been working on this issue since 1984 and recently I published a book with a Senior Officer from EPA, Chris Wozniak, called The Regulation of Agricultural Biotechnology In the United States and Canada so your Committee might be interested in looking at that. It is quite a thick book. This is a very controversial issue as you know, there is a lot of information, good information, misinformation and confusion. We put this book together to address the people largely who think that or who have stated there is no regulation of these products, number one, or secondly, while there is regulation but it is lax and the agencies just rubber stamp applications that come in from industries. So, that is certainly not the case and if you are interested in how these things are established to be as safe as other products of conventional breeding, then you might want to get this book and take a look at it.

Ms. Nakamura: What are your major – I do not know if all of us are going to get a chance to get the book and read it. But what are your major conclusions?

Dr. McHughen: Relative to the rest of the world the U.S. has a very robust and functional regulatory system. The USDA is primarily responsible for field release for environmental impacts looking for plant pests especially. FDA is primarily responsible for the safety of the food and feed that comes from genetically modified products and EPA, as you already have discussed, is primarily concerned with pesticide uses and the track record is impeccable. In the period since when the U.S. first started testing and commercializing genetically modified plants, and that was back in 1988, there has not been a single incident of harm to any environment from a GMO nor has there been any documented verified instance of harm to a human or an animal from the consumption of genetically engineered foods. This is

not my opinion, this comes from the National American Academy of Sciences. It comes from the American Association for the Advancement of Science, the largest scientific society in the world. It comes from the World Health Organization and many other scientific societies around the world who have investigated the safety of GMOs.

Mr. Bynum: Point of order?

Chair Hooser: What is the point?

Mr. Bynum: This Bill is not about the safety of GMO field and I would like to use our time focused on things that are related it.

Chair Hooser: Thank you. Councilmember Bynum's point was that this Bill is not about GMO foods or the safety and his request is to focus on the Bill. I am giving a fair amount of latitude to each member and so your point is taken and I acknowledge that. We do want to focus on the Bill, but Councilmember Nakamura, if you could provide.

Ms. Nakamura: Well, I think we are setting up a permitting process for GMOs the way I read this Bill. So, I think it is germane to the discussion and you may disagree, but I do have another question. Just in terms of based on your background, what do you see as the strength and weaknesses of this Bill?

Dr. McHughen: Well, I am in favor of people having a better understanding of where their food comes from in the first place. I am certainly in favor of people having safe food supplies and I am in favor of the judicious application of genetically engineering when it gives us product, for example, crops that can be grown with fewer pesticides or with less water on smaller acreages so that we are not using whatever land we have left and turning them into farmlands. So, those are positive things. If we can encourage people to become more educated on where food comes from, I think that is positive. Negative aspects on this, well you have heard some of the legal arguments this morning. From the scientific standpoint, one thing that I will focus on this afternoon is the moratorium and EIS procedure. I must say first of all thank you for having me here. This is my first visit to this beautiful island and I appreciate the opportunity to speak to you. But I must be very envious of your tax revenues because these things are extremely expensive. I know we in California, we do not have the budget to do this. When USDA conducts an EIS, it takes them upwards of a year to complete, major resources, and it costs a lot of money. I do not know the exact figure, but I would estimate around one million dollars (\$1,000,000) per application and even more limiting perhaps is the human resources because these things are highly technical, the people who are qualified to conduct an EIS do not grow on trees and even if the USDA, they have difficulty finding enough people to do the work. So, as I say, I am envious that you will clearly have enough money to hire Ph.D. scientists who are experts in this technology. More scientifically, and that is an economic issue. But if you can deal with it, that is fine, that is great, good for you. Scientifically, you have a moratorium and EIS, but how are you going to write the EIS without doing the field trials because an EIS is based on the data. It is not an opinion piece. It is not a planning piece. It is based on the data compiled from field trials. So, you have set up a "Catch-22" where currently the companies, but it could be the USDA, it could be a university trying to investigate and conduct research here. It is impossible for you as the County to conduct the EIS without actually conducting field trials. But you cannot conduct field trial because there is a moratorium until you conduct the EIS.

Ms. Nakamura: Thank you. Dr. Berg going back to the testing that you have done, I just want to get your feedback on the resources of the Department of Health to really identify the streams that are needed and to test for those Restricted-Use Pesticides and General Use Pesticides that you think might impact the environment. Can you discuss your concerns about the resources to do this?

Dr. Berg: The Department of Health has been cutback in their Water Quality Monitoring Program already quite heavily and for that reason, there is only one (1) water quality monitor on this island. There is no air quality monitor on this island and they have contracted me to help them do it because of limited resources. To start in on a pesticide program and if they did so, it would have to be Statewide and they could not just come to Kaua'i, that would be a major initiative that would have to go through the legislature.

Ms. Nakamura: Do you think, for example, with invasive species. The County gave moneys – we will follow-up later.

Chair Hooser: Thank you, Councilmember Nakamura, Councilmember Yukimura.

Ms. Yukimura: Good afternoon gentlemen. I feel really deprived to have to spend ten (10) minutes on all of you because I could spend ten (10) minutes on each of you. But I want to just real fast, if I can get a quick answer from Dr. Berg, would you be willing to work with a group of people who are interested in developing impact studies on water pollution and would you be available to help?

Dr. Berg: Yes.

Ms. Yukimura: If you were to develop a study, I would like you to cost it out and develop a scope, if you would to present.

Dr. Berg: Yes.

Ms. Yukimura: Thank you. Now, my question for Dr. McHughen, you are an expert in biotechnology?

Dr. McHughen: I am a specialist in biotechnology and molecular genetics. My background training is in molecular genetics, so DNA. My work more recently in the last ten (10) years in biosafety. So, I specialize in the safety in GMOs.

Ms. Yukimura: You are a Professor at?

Dr. McHughen: University of California – Riverside.

Ms. Yukimura: Do you get funding from the biotech companies for your work?

Dr. McHughen: I get funding from the taxpayers of California. I do not accept research funding from private industry. I do get occasion consulting contracts which the University allows me a certain number of hours a year. But, no, I do not conduct my research with private funds.

Ms. Yukimura: I am really interested in this technology and at the public hearing, there was some allusions to insulin being related to biotechnology, can you explain that?

Dr. McHughen: The process of genetic engineering allows scientists to take genes from any organisms and then put it into any other organism, any other species. The first commercial product of genetic engineering happens to be insulin. It is actually the gene that was copied from the human gene for insulin. All mammals produce insulin. We all have a gene that codes for, it is a recipe to make the protein called insulin. Historically, we have gotten insulin from farm animals, pigs and cows, and that was okay. But since the 1980s almost all insulin used by diabetics is genetically engineered with bacteria into which the human gene has been inserted. The bacteria has the human gene now, it happily read that human gene for insulin and it turns out, it makes the protein insulin and the insulin is then extracted and sold to diabetics.

Ms. Yukimura: It is much more acceptable to the human body in that form than from pigs and other animals?

Dr. McHughen: Well, yes because it is identical to human insulin.

Ms. Yukimura: Right.

Dr. McHughen: We do not have to adjust to pig insulin, for example.

Ms. Yukimura: I recently heard – no, it have been a while, maybe a year ago, about Stanford University genetically engineering a bacteria that would help prevent cervical cancer or something like that?

Dr. McHughen: There are a lot of vaccines. In fact, probably one of the busiest fields in medicine now is the development of pharmaceuticals and medical treatments using genetic engineering. It is not just insulin. Insulin was the first one, but dornase alpha, if you have cystic fibrosis. I have a sister-in-law who is setting a record for being one of the oldest people on the planet with cystic fibrosis because of this genetically engineered drug that came available just when she was about to be expected to die. Fortunately, she is still alive. Many people are still alive because of genetic engineering.

Ms. Yukimura: So, the technology is like a tool and like any other tool, like nuclear research or whatever, it can be used for good purposes or for harmful purposes, I would imagine.

Dr. McHughen: That is exactly what I argue in my various books and columns, that genetic engineering is a tool. It can make insulin. It can make crops that use less pesticide or grow with less water, but it could also be used to introduce, inadvertently, allergens into a common food that does not ordinarily have those. So, again, work particularly with the National Academy of Sciences has been investigating the potential risks with genetic engineering in agriculture going back to 1986. In the studies, they come out every second year or so looking at different aspects, every single one of those studies to-date has said that the risks associated with genetic engineering are no greater than the risks associated with conventional breeding. In fact, the products may be safer.

Ms. Yukimura: So, how do we have this process that tries to prevent or protect against inadvertent or sometimes intentional bad use of technology, especially with use of crops and plants?

Dr. McHughen: Right. Again, the regulatory agencies, USDA, FDA and EPA all rely very heavily on scientific studies particularly those from the National Academies. One of the reports that I was involved with early on recommended that something we do need to be careful of is the inadvertent introduction of allergens or intoxicant into a food that does not ordinarily have those. FDA puts emphasis on looking for potential allergens or intoxicants in new genetically modified foods. Similarly, for releases to the environment, USDA is primarily concerned with weediness. So, the Academy has made recommendations, look at outcrossing incidents and compare that with the traditional type of crops and see if it is elevated. Dormancy issues, how long did the seed stay viable in the soil? Are those values different from the traditional version of crop? It gives scientific guidance and foundation to the regulatory agencies to ask those questions and ascertain that the product is at least as safe. Nobody says that these things are absolutely safe, that is impossible in science. But we want them to be at least as safe as the crops that we are growing currently that are not genetically modified.

Ms. Yukimura: There is a lot of concern about cross pollination into super weeds or other things and I learned recently that GMO sunflowers on the mainland are not allowed to be experimented because there are wild sunflowers on the mainland and therefore the potential of cross pollinating.

Dr. McHughen: That is correct.

Ms. Yukimura: What protections are there against that kind of environmental contamination, if you will?

Dr. McHughen: It does happen. Cross pollination happens. But it does not happen as the result of genetic engineering. It happens as a result of the basic nature of the species you are working with. If you work with for example, canola. Canola has a lot of pollen, it cross pollinates naturally. So, it does not matter whether it is a genetically engineered canola or a conventional canola, it will cross pollinate with other related species that happen to be growing around. Now, we have noticed that this has actually happened with genetically engineered canola. There are herbicides resistant canolas that have outcrossed with non-genetically engineered canolas and related species. But we also noticed that it happens with herbicide tolerant canola that are not genetically engineered. They also outcross. The question we have as regulators, as scientists, is to say it is more likely to occur with genetic engineering or is the likelihood the same as in conventional practice and it turns out that the likelihood is the same as with conventional practice. Farmers deal with these things. We have dealt with these things ever since the dawn of pesticides really. Outcrossing happens, transfer of herbicide tolerance genes. Not all herbicide tolerance genes are genetically engineered, right? All plants have herbicide tolerance naturally in them and what we found over the years is that genetically engineered plants behave the same as type of species that it was derived from.

Ms. Yukimura: I do not know how many years this regulatory process has been in effect.

Dr. McHughen: Eighty-eight (88).

Ms. Yukimura: Eighty-eight (88) years?

Dr. McHughen:

I am sorry, 1988 was when it started.

Ms. Yukimura:
twenty-five (25)?

Since 1988, thank you. So, that is what,

Dr. McHughen:

A quarter of a century.

Ms. Yukimura: How many problems like disasters have occurred that is defaults or problems in the regulatory failures, I guess, is what I am trying to say?

Dr. McHughen: There are no disasters that have occurred. There are certainly some inefficiencies and the regulatory system is constantly undergoing review to minimize the inefficiencies. But there was again, another National Academy report that came out in 2010 called *The Impact Of Genetic Engineering On Agricultural Sustainability In The United States*, so looking specifically at how biotechnology affects sustainability and the conclusions of that report were that genetically engineering actually enhances sustainability when it is used properly, that is there is a reduction in the amount of pesticide use and there is an increase in yield. These are general things, they do not happen on every farm or in every location. But on average, there is an increase in yield, a reduction in pesticide use, reduction in the amount of fuel burnt by the farmers driving around their farms and so on. The downside is that these crops still have the same problems that we had in the past, that if you have for example, a herbicide tolerant crop, eventually the weeds will overcome the herbicide. Similarly with insect tolerance so we have to manage those things properly.

Ms. Yukimura: I see. I am out of my time, but thank you very much. You are very succinct for a scientist.

Dr. McHughen:

Thank you.

Chair Hooser: I assume everyone is available for at least telephone conversations with Councilmembers if they should in the future. Councilmember Bynum.

Mr. Bynum: I am going to go back to Kyle on what I did not get to, Kyle. So, thank you very much. This is your handout, right, that was distributed at lunch time?

Mr. Smith:

It is.

Mr. Bynum: I just want to go over this really briefly and I am hoping Dr. Valenzuela is here. You and I have talked a few times over the last couple of days actually at Kaua'i link because I was still staggered by some of this numbers and I still am. I just want to confirm I got this right, the average use of pesticides for production agriculture, eight (8) to ten (10) times, maybe less, maybe more, but no more than twelve (12) during a growing cycle. I have had ten (10) farmers tell me that so I do not think that there is any disqualifications about that. But your data says one (1) field, the average field in Pioneer is being sprayed not ten (10) times a year, but two hundred forty (240) times per year, is that correct? I wanted to ask Thomas from pesticides, are there regulations about the frequency of spraying? Are there regulations about the combination of chemicals? But I just want to make sure that the data is correct, two hundred forty (240) days. Now, the quantity, the industry said about a pound a year per growing cycle, right? If there are (2) two cycles then about two (2) pounds. So, if we took that the highest

producing States in the Country are like Kentucky and North Carolina that grow tobacco and they use about two (2) pounds per acre per year, correct? So, if we take what the industry tells us, we are applying as much pesticide as the most pesticide applications of any State, of the top four (4) States, correct?

Mr. Smith: Let me try to clarify it just so that we are clear.

Mr. Bynum: Please.

Mr. Smith: First the clarification is that if you take that industry spreadsheet or the chart and you actually did two (2) seasons, our average year would be among the top four (4) years for all of these mainland examples from 2003-2010. More importantly, our average year would be highest average of any of the States that are in that chart anywhere. Now to answer your specific question on the field, the Waimea Research Centerfield, it is a complex of fields and so they are applying different subplots on those fields through the year. So, when you say two hundred forty (240) days of the year, they may be spraying here, here, and here on this part of the field today, and then tomorrow they are spraying there, there, and there, a couple of other locations. But as far as if you actually add up and you look at the research center, it is two hundred forty (240) days on average. Now, there are some years where it has been higher than that substantially. There are some years where it has been lower than that. So, that is the average over a number of year.

Mr. Bynum: As I listen to this whole debate, I just here everybody say, "We are regulated. We do these thing. We apply according to the label" and that assumes production agriculture with five (5) to twelve (12) applications a year. So, if I live next to a production agriculture field, weeks go by where there are no pesticides being sprayed, correct? I mean, every farmer tells me that, six (6), eight (8), ten (10) weeks, nothing, no exposure.

Mr. Smith: That is correct.

Mr. Bynum: But on Kaua'i, two hundred forty (240) days on average there is pesticides being sprayed. That frequency blows my mind and I am going to run out of time and I want to get Mr. Valenzuela up here. But then when you got the actual data, this is what I am reading here, you showed this chart with eight (8) pounds per year, not two (2) pounds. But the actual data that you received, eight (8) pounds on average, correct?

Mr. Smith: That is right, for restricted use and the general use pesticides would be very similar.

Mr. Bynum: As just a guy who lives on Kaua'i, production fields getting sprayed eight (8) to ten (10) times, the highest State is at two (2) pounds. On Kaua'i getting sprayed two hundred forty (240) times on average, average eight (8) pounds or four (4) times as great as the highest application rate in the Country.

Mr. Smith: That is right.

Mr. Bynum: Listen Kaua'i, are you not shocked by this? I am. I am shocked. That is it.

Chair Hooser: Please, if everybody could just be quiet. If everyone could just please not respond and let the conversation continue. Dr. Valenzuela, if one of you could maybe move the seat behind and let Mr. Valenzuela come.

Mr. Bynum: While he is coming up, everyone on Kaua'i, please read two (2) things: read Mr. Valenzuela's study from the University of Hawai'i and read the American Academy of Pediatrics paper that Dr. Evslyn has presented here. Please, everyone on Kaua'i read those two (2) things. Mr. Valenzuela, could you give us an overview of your work related to this and your paper? We do not have much time and I just want to do questions and answers. I just want to say share with us, please.

HECTOR VALENZUELA: Thank you for allowing me to talk. I have been concerned about the crop biotechnology industry since they got established in Hawai'i and the effects internationally. There is the claim the concerns are not science based, that is just emotions and so on. I have prepared a few reports based on the scientific literature to make a case that some of the concerns from the community or from skeptic scientists are indeed document in the literature. So, I do not know what reports you are talking about, but one of the reports I prepared was on the use of pesticides by chemical industries in the State. I documented that it is well established that these chemicals do not stay put, but they actually move around. They move out with the dust, they move in the wind, and when scientists conducting surveys primarily in other parts of the world, they indeed find these pesticides to be found all over. As a follow-up, it is been already twenty (20) years since we released GMOs and we are starting to get information about adverse health effects for some of these pesticide applications. A report was published a month or two ago from a referee publication on the epidemiological studies conducted in Latin America from pesticides that are used by crop biotechnology companies. So, epidemiological studies consist of researchers going into communities to evaluate farmers, processes of applicators, their families, people in the cities and towns, compared to similar populations, ethnic background, socioeconomic background, and so on of groups that are not exposed to these pesticides. There is statistically significant results that are starting to come up in terms of a lot of health effects from exposure to pesticides. We are talking about genetic damage, DNA damage, mutations, and so on. Also to skeletal operations, birth defects, and still-borns. For example, there is a study from Columbia and they call it an epidemic of children that are born with only one (1) eye and I forgot the medical condition. So, these are based on a series of studies conducted over the past ten (10) to fifteen (15) years in Latin America that are showing that evidence. Separately, researchers in that region have also conducted similar surveys with wildlife, with aquatic populations, and they have started to observe similar kinds of symptoms from aquatic habitats, amphibian and reptiles like alligators, showing those types of symptoms. Separately, we are starting to see more and more laboratory studies conducted in Europe, Russia and so on and that research are based on animal studies is also starting to come up with some of the same kind of symptoms that are of certainty based on epidemiological and animal studies. So, it is becoming more of a triangulation effect in terms of observations and separately, surveys are coming up and literature reviews were just published this year documenting the link of pesticide application, pesticide exposure by applicators, higher residues of pesticides in the families of these applicators, and higher levels of tumor cancers in the children of pesticide applicators, reviews in terms of increased pesticide use and impact on wildlife, reviews in terms of increased pesticide use and decreased biodiversity in aquatic habitats. So, more and more evidence is coming from the scientific literature that is starting to document that everything has not been "honky dory" and the statement that nobody has yet been harmed from biocrop

technology may not be backed by the evidence. These points to the fact that genetically modified crops and the use of pesticides is part of the same problem. You cannot separate one or other because if you are growing GMO crops, you are by default using pesticides. So, when you make a health assessment of the industry you have to assess both the GMOs which themselves are pesticides and these are pesticides. One of the modes that has not been discussed today is that these pesticides often act in combination and sometimes when they act in combination, they are a lot stronger than when you expose them individually. I believe Dr. Pang would call this potentiation. So, this is basically what I have in my report and it is available for people to download.

Mr. Bynum: Dr. Valenzuela, on the last issue that you just pointed...

Chair Hooser: That was ten (10) minutes.

Mr. Bynum: Oh, that was ten (10)?

Chair Hooser: Yes.

Mr. Bynum: Wish I had more time.

Chair Hooser: Thank you. You can stay there, there will be a few more questions. I am not sure from who, but Chair Furfaro, did you have questions?

Mr. Furfaro: No, I will let others use the time.

Chair Hooser: Thank you. So, it is my turn. I would like to ask Paul Towers from the Pesticide Action Network to come up. Maybe Kyle, you could let him sit in your seat and Don Heacock, thank you for waiting. If you could maybe – if you do not mind him taking your seat, that you be great. We will let everybody get settled. Carl, I would like you to stay there, Carl. If Don could take you seat sir. Yes, thank you. I am sorry, I cannot remember your name or I cannot see that far. I am going to go ahead...wait just a second.

Ms. Yukimura: I just want to procedurally say I would like to ask some questions of Dr. Valenzuela and Mr. Towers and so in our next Committee Meeting I would like an arrangement that allows us to do that.

Chair Hooser: That would be fine. So, you can start my time. Paul, Mr. Towers, you from the Pesticide Action Network and you flew over here to give testimony so I would like to start with you. Other communities in the United States have passed pesticide regulations, buffer zones, and disclosures. If you could talk a little bit about the variety of legislation that has been passed and in place by towns, cities, and localities.

PAUL TOWERS: I sent some of these examples around to the Councilmembers.

Chair Hooser: Speak loudly, please.

Mr. Towers: I will try and speak louder. So, I sent some of these examples around for Councilmembers...

Mr. Furfaro: Start by introducing yourself for the record.

Mr. Towers: My name is Paul Towers. I am with the Pesticide Action Network. We were founded thirty (30) years ago in Malaysia, but part of an International network of scientists and communities that work to advance safe solutions to hazardous pesticide use. I passed around this spreadsheet that outlines many of the communities across the Country that have worked to create buffer zones for example. I know that that has come up in the discussions here with the Council. There are many communities both at the City level and County level that have actually already created these types of buffer zones. Some of the examples I showed are from my home State of Arizona, for example where the State itself has imposed buffer zones of a quarter mile around schools, for example. It is about one thousand three hundred twenty (1,320) feet. Many other communities in various Counties of California have implemented their own buffer zones. In some cases it is a quarter mile, sometimes it is five hundred (500) feet. I sent you some of those example so that you can take a look. I think the important thing to understand is that when the Federal government has failed to create these buffer zones, many communities have stepped up in their stead recognizing that pesticides are behaving in very drift-prone ways. They are landing in places that they are not supposed to go. So, the testing that we have done, independent testing, and I have shared some of the examples of testing that we have done across the Country. We found these pesticides many times a few hundred feet from where they were applied and many times in peoples' front lawns, their gardens, their sandboxes, and where children live, learn, and play. So, I think that the important thing to understand is that pesticides are in fact drifting. The same ones applied this island, whether it is Lorsban, Chloropyrifos and many others on the list. We are finding them in other communities across the Country and other communities have stepped up, seeing that option and that responsibility to do it. Just recently actually, a couple of weeks ago, we filed a lawsuit yet again against the Environmental Protection Agency for its failure to create buffer zones like you are discussing right now, mandated Nationally. So, we filed that lawsuit because of a law that was passed in 1996, the Food Quality Protection Act, that was meant to better protect children specifically, from pesticides wherever they might interact with them. That law was meant to go into effect by 2006. The Agency has done nothing since then to actually create these buffer zones or any other protections. So, here we are many years later, another six (6), seven (7) years later and so we have actually tried to compel the Federal Agency, the U.S. EPA to create these buffer zones. I think that it is very clear that the Federal government is really unable or unwilling to do anything about it and that has left responsibility to State and local governments to step up.

Chair Hooser: Thank you. I am sure you heard Dr. Berg's testimony in terms of the Atrazine and the number of chemicals that I am not going to pronounce right now and both you and Don Heacock, a Biologist, you have more experience with these chemicals that I do. So, maybe if you first and then Mr. Heacock can talk about the impacts. What is your impression once you hear that these chemicals are being found in our local waters?

Mr. Towers: I am not only concerned about what is found in the water, but also the University of Hawai'i study that was mention, I think earlier. Every time that the study looked to sample pesticides in the air it found pesticides including again, that same chemical, chloropyrifos that I had mentioned before. In the report that I passed around which compiles the independent research, very similar to what the American Academy of Pediatrics did. We just did it two (2) months before they did. But it actually compiles that meta-analysis and looks very clearly at very small amounts, these pesticides specifically, chloropyrifos, can have profound impacts on childrens' health and intelligence.

Ms. Yukimura:

Is this yours?

Mr. Towers: That and actually the bigger report bounded report. So, it actually showed longitudinal studies in the Monterey Bay area that...

Mr. Furfaro: Excuse me. Mr. Hooser, just a point of clarification, which items is he referring to?

Mr. Towers:

It is that one.

Chair Hooser:

You are talking about this one?

Mr. Towers:

Sorry, I do not have a copy in front of me.

Mr. Furfaro:

Thank you.

Mr. Towers: So, just to sum up that that compilation of independent research, not our own, but the research out there demonstrates that there are profound impacts on very small amounts of chlorpyrifos and similarly from Atrazine. I think the important not there is that actually it runs counter to the current logic in a lot of science, that is that larger doses, larger exposures you will have even more profound impacts. Atrazine behaves in very interesting and unusual ways. Actually at low-dose exposures you could have even more profound impacts than at those higher doses. So, it is important to take a look at that way. I think it is just important if you take a look at that research.

Chair Hooser: Thank you very much. We only have a few minutes. Mr. Heacock, you have been waiting all day, I appreciate that. But if you could speak briefly about the aquatic impacts possibly.

DON HEACOCK: When I started reviewing about two (2) months ago a lot of the published reviews literature on both the chronic and lethal effects of these pesticides on aquatic organisms, I was actually pretty shocked since thirty (30) years ago when I took fish toxicology at Humboldt State. Many of these are now known, like Atrazine, to cause long-term effects on the hormonal system or endocrine systems, where they keep fish from spawning, there are unable to – their behavior changes. Many things like 24D, EPA lists them as highly toxic to both humans and animals, especially aquatic animals. Things like herbicides in general, since they are applied to the soil, if we get small rains or even moderate rain, anything that causes runoff, you can have potentially topsoil that has pesticide absorbed onto the soil particles wash into – from large areas of land perhaps hundreds of acres, into one small drainage ditch or similar and discharge into one point along our coastline. We, similar to I think a question that was asked of Dr. Carl Berg, the State of Hawai'i has not developed a really good sampling protocol. When we had the urchins die off of Kaunakani last year we had Dr. Teri Work who is a top pathologist look at them. But now we have adjusted that protocol because he could not find a disease organism that he will now take tissue sample and send them to the Federal toxicology lab to look for tissue analysis.

Chair Hooser:

I had a specific question.

Mr. Heacock:

Sure, please.

Chair Hooser: Have you seen the evidence of sea life, just talking about sea urchins or any degradation of our near shore waters that you might attribute to pesticides?

Mr. Heacock: Well, I will answer that in two (2) parts. I personally have not seen any recently, although there are many communities on the West Side up to Hanapēpē that are talking about whole groups of animals disappearing from their reef, especially urchins. Urchins as some of you may know are very susceptible because they absorb chemicals through the test, their shell. The other thing is back in 1990 or 1991 we completed a watershed assessment in Nāwiliwili Stream and we applied what is called the NAWQ, the National Aquatic Water Quality. They tested for one hundred eighty-seven (187) pesticides, the FEDs did. The only thing that they found was dieldrin, an old tramaticide that was used to build houses. It has been banned for twenty-five (25) years, but it is in the fish tissues of Nāwiliwili Stream. It cost fifty thousand dollars (\$50,000) to do that test. We do not know that that chemical is in Nāwiliwili Bay, for example because we have not been able to look.

Chair Hooser: Thank you very much for that. I am probably about out of time. But until the buzzer, I want to ask Dr. Valenzuela. In terms of looking at impacts of the industry, industry practices, growing GMO, it is not really whether the food is good or bad to eat. But what impacts the industry might have on our island and community? There is pollen drift and pesticide use. Do you have any comments before the buzzer goes off as to what impacts that the County might be concerned with directly? Is pollen drift an issue to organic farmers? The bell just went off.

Dr. Valenzuela: (Inaudible) The fact is that we are dealing with toxins. The GMO products themselves have toxins and we are dealing with the combination of pesticides that have been applied and the pollen or the plant drift. In terms of side effects, it is just unintended consequences

Chair Hooser: Thank you very much. I think that was the end of the round, if you would. So, the plan was to go to public testimony until 5:00 p.m. or we can go an hour and then recess until Tuesday, the August 13, 2013, and resume. That was the discussion that I had with a few people. So, Councilmember Yukimura.

Ms. Yukimura: I have a question I feel is really important to ask in the public of Mr. Towers because he is not going to be here again. May I?

Chair Hooser: Yes. You were the member that had to leave early and that is why I was trying to accelerate the discussion. But, yes, you are more than welcome.

Mr. Towers: I am also happy to speak by phone or whenever available.

Ms. Yukimura: I know but this...

Chair Hooser: Go ahead.

Ms. Yukimura: I think it is important for everyone to hear.

Chair Hooser: Go ahead.

Ms. Yukimura: How easy is it to determine drift and what kind of cost is it to test for an incident?

Mr. Towers: Well, it depends on the way and what you want to sample for with drift, what sort is the proximity and location, whether you are looking just to test for a positive or negative or look for an actual amount of exposure? So, those are different types of active or passive sampling. So, depending those types of factors and actually both those types were employed with the University of Hawai'i (UH) study commissioned here by the County, but focused more on the passive sampling so whether or not pesticides were found in the air or not? So, because of those different factors it can be more or less expensive. If you want multiple drift sites and are actively looking for exposure, it is pretty expensive because you are looking to run regular samples all the time. Then a drift incident is different because you are look after the fact for evidence of drift. What you are usually looking for is drift onto a plant or something else that you could run a test for. What you are not testing is what might have been the exposure through the air to a person or a child or whatever it might be. So, you are intending to look for non-target drift onto a plant of some sort, that is the thing that you could actually analyze. A person is actually much more difficult in that case.

Ms. Yukimura: Thank you.

Chair Hooser: Would any members like to ask Mr. Towers a question following Councilmember Yukimura's lead?

Mr. Rapozo: I just had one.

Chair Hooser: Go ahead.

Mr. Rapozo: It is about the Atrazine, the three (3) parts per billion?

Mr. Towers: Yes.

Mr. Rapozo: What does that mean?

Mr. Towers: What does the number mean?

Mr. Rapozo: Yes, is that significant? Is it insignificant?

Mr. Towers: Yes. Well, so the numbers, the MCL that the U.S. EPA, that is the threshold that they have set for what they determined to take action on. They are currently reevaluating Atrazine as we speak. They may come up with some different numbers in the relative new future, although knowing EPA that could be years from now. That is currently what is in the process. What the research says is different than what EPA's threshold is. So, epidemiological studies they have .3 parts per billion which is some of the levels we have seen around the islands that is linked to hormone disruption in women, for example. At .1 part per billion we have seen increased risk of other hormonal changes and then more recently, the Scientific Advisory Panel convened by the EPA which is the independent scientists, they bring to review their science said that exposure to Atrazine even at very, very low levels is increasing the risk of cancer. So, that is being sorted through as we speak. But what the independent research says and what the EPA threshold is, and is being evaluated at, do not actually line up. So, I think that that is why there are some concerns.

Mr. Rapozo: That test was three (3) part per billion or point three (0.3) and you are saying point three (0.3)?

Mr. Towers: Yes, can be of concern.

Mr. Rapozo: So, three (3) parts were billion is?

Mr. Towers: More, yes. So, three (3) parts per billion is the EPA threshold and point three (0.3) is what some studies say. There are multiple studies that have looked at it, but many of them are saying much lower levels than what the EPA currently set are linked to many of these adverse health effects.

Mr. Valenzuela: Point one (0.1) changed sex of frogs from males to females, point one (0.1) parts per billion.

Mr. Towers: Yes, he is correct.

Mr. Rapozo: Yes, I know. But I do not know anybody that changed that sex last over the last thirty (30) to forty (40) years.

Mr. Hooser: I should thank you actually.

Mr. Rapozo: That was indirect contact and that is I think, the concern that I have with the discussion because that is what we hear from the public and people run with that. Like, if you get enough Atrazine you will change sex. I just want to keep the discussion factual and we know it may have changed the sex of a frog at some heavy dosage or whatever it was, but I know a lot of people who worked in the plantation fields for many, many years and none of them changed sex. I want to make sure that we keep the discussion in a tone that is just really fair and equitable for both sides.

Mr. Towers: I would agree with that, Councilmember. I would say that the research report that I handed you listed some of the summaries of information and at the back of it lists all the relevant studies. If you wanted to dig into that, it has a summary and link to every study that might be relevant.

Mr. Rapozo: I appreciate that.

Mr. Towers: Certainly.

Mr. Rapozo: Thank you.

Chair Hooser: Thank you, Councilmember Nakamura and then followed by Councilmember Kagawa.

Ms. Nakamura: For Dr. Berg and then Mr. Towers, so when you did the sampling of some of the streams and you found the Atrazine, what was the level of the Atrazine that was found?

Dr. Berg: The sampling that I did used a test strip at plus or minus at three (3) parts per billion.

Ms. Nakamura: I see.

Dr. Berg: The testing that the Department of Health did gave results from point one (0.1) to point four (0.4) parts per billion. So, ten (10) times less, much more sensitive.

Ms. Nakamura:
which is the EPA maximum?

So, yours was three (3) parts per billion,

Dr. Berg:

Yes, which is the EPA, yes.

Ms. Nakamura: The question on buffer zones on pesticides, I wanted to ask for different municipalities who have required buffer zones, is it usually part of a zoning procedure or is it part of a nuisance concern?

Mr. Towers: It depends on the City and County. California has a slightly different rubric it operates within and so Counties there are left to a slightly different process about how they pursue it and there is a lot more authority concentrated with the County Agricultural Commissioner. That person is a staff member to both the State but is elected or hired by the supervisors in each County in California. As has been talked about throughout the day, each County and municipality is very different across the County. What is there though is it is left to that County Agriculture Commissioner to work with the public to develop the permit conditions that they think are relevant to their local community and so they work to set those through a series of public hearings and that is what has happened throughout many California Counties.

Ms. Nakamura: Do you see those buffer zones as being a set limit depending on whatever pesticide is used? Can it be pesticide-specific?

Mr. Towers: It can be pesticide-specific. There have been those case and there are broader ones as well. So, it is depending on the County and what the local conditions that make sense. There has been a lot of talk about fumigants here today about those being many of the buffer zones, that is true. There are also many other drift prone phenoxy herbicides or chloropyrifos for example, things like that also have buffer zones.

Ms. Nakamura: Thank you very much. I really appreciate your feedback.

Chair Hooser:

Councilmember Kagawa.

Mr. Kagawa: I will try to be brief. Paul you spoke about Arizona being a place where they successfully implemented buffer zones. What kind of crops were in that area that they proposed those big buffer zones?

Mr. Towers: Arizona grows a variety of crops. I do not know all of the make-up of them offhand, but it is been a variety of cotton and citrus historically and there is some corn like there is on the island. I do not think it makes up a huge percentage of it.

Mr. Kagawa: I guess my relevance of what I am trying to draw is maybe Arizona – because I have been there a few times. It is very dry, it is like a desert in a lot of areas. But maybe the land I think is sandy soil and maybe it is not as desirable so maybe the companies felt that it was not worth fighting for their more desirable lands elsewhere. Is that possible?

Mr. Towers:

It is possible, anything is possible.

Mr. Kagawa: Everybody talks about how Kaua'i is such in the big farming industry. It is so desirable. We have that beautiful red dirt and we have a lot of waterways.

Mr. Towers: Certainly. Anything is possible. I would say that there are buffer zones throughout many California Counties that grows more specialized crops than flair in the Country of saleable America. So, I think there is much in California as well and that has been demonstrated that buffer zones are there and they are large and they work.

Mr. Kagawa: I want to thank you for all of your answers. Hector, just a quick question for you. In Latin America, the study that you did, do they have a lot of regulations there, like EPA or Department of Health, that type of regulations for big agriculture companies?

Mr. Valenzuela: Yes, they do have regulations. These are commercial plantations where they grow GMO crops like soybeans and so on.

Mr. Kagawa: Are the laws stricter or less strict than the United States?

Mr. Valenzuela: I think they are more lenient than the United States, but it shows that crop production recommendations that they are following, based on the University and so on is leading to exposure of world populations and these are symptoms that they are starting to observe. I do not know that the levels are similar to the ones that you would see in California or Iowa. But those are just some of the symptoms that they have observed and they do have some chemicals that we do not use in the United States.

Mr. Kagawa: Thank you.

Chair Hooser: Yes, Councilmember Yukimura.

Ms. Yukimura: Mr. Towers you said that...

Mr. Towers: Yes.

Ms. Yukimura: I am sorry.

Mr. Towers: Go ahead.

Ms. Yukimura: You said that the buffer work, how do you know they work?

Mr. Towers: Yes, that is a good question. Sorry, I meant to say that there has been no demonstration that they have led to any sort of agricultural harm. There has not been any sort of independent study that said this is the buffer zone here that does or does not work. There has been some independent separate analyses, but there has been no analysis specifically of the buffer zones at any of these Counties that I am aware of. So, when I said work at the end, I meant to say there has been no demonstration of any harm to any of the industries nearby.

Ms. Yukimura: But has there been demonstrations of harms where there are no buffers?

Mr. Towers: Where there are no buffers? Well, there are studies that have shown where there are pesticides being found at certain distances from agricultural operations. So, I guess by that extension if there was a buffer in place, then yes, those studies have been demonstrated.

Ms. Yukimura: Thank you.

Mr. Towers: Certainly. I would be happy to supply more information there.

Ms. Yukimura: Thank you.

Chair Hooser: Before I ask a question, anybody else? Thank you again, for being here Paul. A follow-up, since you have been involved in and aware of other Counties doing buffer zones and pesticide regulation, do they experience something similar in terms of the large agribusiness threatening lawsuits and do those lawsuits come to fruition in recent history?

Mr. Towers: Yes. Historically, as Counties have considered many of these steps, there are threats of litigation and costs to the County or City or whatever it might be and as a result that has been a constant discussion at many a meeting like this. I think despite those many Counties that have moved forward with buffer zones or better disclosure or posted notification or whether it is other sorts of steps that they might take to better inform the public about what is being used, when, where, what time and what methods, and in those cases, yes, there are these constant threats of litigation. In none of those cases have we seen that actually play out, where a County has been actually sued for creating a buffer zone, where a County has worked to create better notification. In none of those cases has that actually played out. So, just to set you a little bit more at ease, we have not seen that play out in other parts of the Country.

Chair Hooser: Thank you very much. Councilmember Yukimura, do you want to follow-up to that?

Ms. Yukimura: Yes.

Chair Hooser: Go ahead.

Ms. Yukimura: Do you have any situations where there have been moratoriums?

Mr. Towers: Well, they are mostly on GMOs, there have been moratoriums. So, there are several Counties. For example in California, that have moratoriums on GMO crops. So, as a separate part of the overall discussion. On moratoriums or bans on pesticides, I cannot think of any Counties offhand that have sheer bans on pesticide use or moratoriums. I cannot think of those offhand.

Ms. Yukimura: Thank you.

Chair Hooser: Councilmember Bynum, and then we will kind of wrap up and go to the public testimony.

Mr. Bynum: Yes, this is really quick. I heard that Oregon recently did an emergency ban of pesticides related to bee death? Are you aware of that?

Mr. Towers: Yes, to bee kills. It is dinotefuran and some of the other neonicotinoid pesticides that have been recently implicated in bee deaths. These are systemic pesticides taken up through the vascular system of the plant. They are expressed through the leaves of pollen and so bees interact with them as they take this up. It makes them more susceptible to other issues and

actually can kill them outright. So, yes, Oregon has taken steps as a State to sort of say these are the way that things can or cannot be sold at local stores and we are going to work with applicators to make sure that they cannot be used right now because that was the core of that. But yes, those are steps that States have taken.

Mr. Bynum: So, States can move quickly? They considered this an emergency, correct?

Mr. Towers: They did. In fact, I think it was just a few weeks' time between when the incident occurred in the Target parking lot and when over sixty thousand (60,000) bees were killed, and when they actually removed that product for some period of time or suspended it.

Mr. Bynum: They were preempted by FIFRA or sued by agricultural people?

Mr. Towers: No, they were not preempted or sued or anything like that. That is one example in Oregon.

Mr. Bynum: Thank you.

Mr. Towers: Certainly.

Chair Hooser: My final question for Dr. Berg is a question that I think needs to be asked. The Department of Health and your tests, the Hanamā'ulu and Nāwiliwili specifically, were there obvious sources these chemicals? Were there crops upstream right away?

Dr. Berg: The answer, yes. We looked at what was upstream from these. In the case of Nāwiliwili Stream you have the housing district and then Kukui Grove Shopping Center you have the corn being grown there. If you look in your mind's eye it all slopes down to Nāwiliwili Stream where they are doing the highway construction. In the case of Hanamā'ulu, the major crops at this time are right on Kapule Highway across from the airport and again, that slopes right down to the bridge where Hanamā'ulu Stream is. My sample in that case was under the old cane haul bridge which is just down the field from those crops. Again, from my testing, I cannot say where it came from. But I can say that there were large-scale GMO crops, corn crops, in both of those areas just above the area.

Chair Hooser: Thank you. Chair?

Mr. Furfaro: Thank you for the question. Dr. Berg, having many family members who have worked sugar, I want you to know that Atrazine has been used for decades in sugar and in pineapple. I think it would probably be very important for us, as you just made an analysis about corn, it may be very appropriate for us to make an analysis about sugar and its closing and pineapple on a calendar frequency. Despite the gentleman from Arizona and all of his tall talents and so forth, there might be other criteria because we are volcanic and we do have water that percolates for decades through our coral systems. But you seem to be unclear about Atrazine being used here and it was used in sugar and it was used in pineapple for decades. I think I am going to, for my own, starting in 1894 with the closing of Princeville sugar right through to Kīlauea sugar and the rest, it might be nice for us to map out some data and I would love to share with you when we have it. But your observation on corn, also...

Dr. Berg: As I said, Chair, I do not know all about pesticides and how long they survive in the environment especially our environment here on Kaua'i. I do not.

Mr. Furfaro: Nor do I.

Dr. Berg: All I know is that I find it in the water, but the source is unknown at this time.

Mr. Furfaro: All I am saying it would be nice to chart out that data.

Dr. Berg: Let us do it.

Mr. Furfaro: Mr. Hooser, thank you very much. Before I give up the floor, may I compliment you on today's session before we go to public hearing? Thank you very much.

Chair Hooser: Thank you, Chair. I have a good teacher. So, thank you very much for that. I appreciate all of the members' cooperation and assistance in moving this forward. Thank you gentlemen. We are going to go into the public testimony phase. Is there anyone here who has not signed up and wanted to testify? That is one (1). The rest of you have signed up? We are going to do our best to listen to as many, if not all of you, as possible depending on how we go. If you could call the first speaker, please. If you all could please try to focus on the Bill and try, if you could to make suggestions on how to improve it and try to avoid repeating what somebody else said. I would really appreciate it. We did spend twelve (12) hours on Wednesday and we are happy to listen more tonight. I thank you very much. If you could introduce yourself for the record. If we can all kind of be quiet as we exist the room so that we can proceed. Thank you.

JILL SUGA: Good afternoon. My name is Jill Suga and I was born and raised on Kaua'i. I am opposed to Bill No. 2491. During my last testimony, I spoke about how this Bill resulted in Kaua'i divided. The division has been based, for me, on emotion, fear and instilled upon the community and for what? Political gain? My main question to the County is what is next? Why is this Bill written for entities that already exist in the State and Federal government and at whose cost? What will the County be sacrificing to support this Bill? If we cannot trust the State and Federal government, can the County do any better? Again, at whose costs? Like, I said in my last testimony this is not the local way. The local way would be to ask the questions, get hands on with the companies, and get the facts of what we really do. You would see the people. Yes, we are large corporations, but that does not make us any less community members or residents for this matter. Besides the work that we do to end world hunger or use our declining resources more efficiently, we actually do a lot more. We provided opportunities for high school and college students providing internships, judge numerous science fairs, volunteered at Career Days, Math and Science Nights, donated food including fresh produce grown by employees, and even organized a West Side Blood Bank. People who know me understand how much I love this island. I would do anything to protect it and my family and friends who reside here. Sorry. After graduating from college my career goal was to do better for the land. I have done studies on reefs, *lo'i* restorations, forest restorations, and plant conservation working on rare Hawaiian plants. I am not going to lie, I was hesitant to work for a large corporation, but I did it the local way. I asked, I learned, and now I can educate. Community members I ask, County members I ask that you do things the local way. Ask questions, learn, and do what is right for the island and

the people. Please do not make this a political decision. If this Bill passes, it leaves me the fear of asking the County what next? Thank you.

Chair Hooser:

Thank you. Next speaker please.

MARK RUIZ: *Aloha.* My name is Mark Ruiz. I was born in Waimea and raised in Kalaheo. I am working at Syngenta for the past fifteen (15) months now. I have never worked for a company like Syngenta where safety is so highly regarded for the employees and the public. This is best job I have ever had and I have learned so much about farming. Sometimes I tell myself, I wish I had found this job a long time ago. If this Bill is passed, nine hundred (900) or more employees will not have jobs and will not be able to provide for their families. Will there be nine hundred (900) jobs available for us? Our *‘ohanas* will hurt with us as we struggle to find new jobs to support them. GMO, Genetically Modified Organism, has been around for centuries. For example, I am Puerto Rican/Portuguese and to me I have been genetically modified or when our ancestors in 1903 had taken the branch from tangerine tree and tied it to the grapefruit tree and it produced the tangelo fruit with is GMO. GMO has been around and will continue to be around. For the pesticides that they spray in the fields, it is highly regulated following proper dosages based on acres. But I bet three (3) out of five (5) people at home, when mixing a pesticide to kill weeds will always mix a little bit more to make it stronger and kill weeds faster. This could be you or your neighbor, but in residential areas we are not regulated. So, it is probable more dangerous living at home then the corn fields near the West Side. I think Bill No. 2491 is bad business for Kaua‘i. GMO to me means “Guaranteed More Ono.” It will field the starving world to come. I strongly oppose Bill No. 2491. Thank you.

Chair Hooser:
Next speaker, please.

Thank you very much for your testimony.

WALLY PALM: Hi. My name is Wally Palm. I am from the mainland. I work for Syngenta. But really, I am representing the employees here of the seed companies on the island of Kaua‘i and I thank you for the privilege of addressing. Three (3) major things that I would like to talk about: regulation, sustainability, and choice. So, agriculture is one of the most regulated industries that there is out there. We have heard about a lot of regulations in agriculture and how effective they really are in terms of maintaining a very safe growing environment. Both GMO and pesticides go through a great deal of regulatory trials and in some respects more than pharmaceuticals. We do not need any more regulation on this particular industry. Sustainability is the next thing. We have heard various definitions of sustainability. Today we heard a definition earlier this morning, self-sustainability, and it is a wonderful concept. But I would respectfully ask the Council and the people of Kaua‘i to adopt a more global view of sustainability. What the seed companies are doing on this island, on this very beautiful island, is vital in the link for the sustainability of the globe. We are helping to feed the entire globe through plant improvement. Plant improvement better hybrids and varieties and yes, GMOs to protect the inherent yield potential that plant breeders are putting into the hybrids and varieties. Not everyone and in fact relatively few people in this world have the luxury to have the land, skill, and climate to be self-sustaining. The plant research that my colleagues in these seed companies are doing is vital to feeding a global population. Do not make a rash decision that will damage that potential. Finally, choice. I think we all view choice as kind of a human right. A right that we as citizens of this island, of this State, of this Country, really have. Unfortunately, this Bill is designed to allow one group of people of very vocal individuals to restrict the choices of many very hard working Hawaiians. Companies have chosen to do business here. They have chosen to do

business here because historically, it is been a very friendly place to do business, beautiful weather, a climate conducive to agricultural production, and a talented and very hard-working workforce. Hundreds of those talented people have chosen jobs and careers working in seed companies to contribute to that global food sustainability that I talked about before. If this Bill passes, those choices will be limited. People who have chosen to make their careers in agriculture and the seed business are likely to have those choices taken away from them because the future of the seed business in Kaua'i will be in jeopardy despite what some people say. They are going to have some other choices to make. How will they pay their bills? How will they send their kids to school and how are they going to feed their families? Thank you.

Chair Hooser: That was your three (3) minutes, but there is a question from the Councilmember. Councilmember Bynum.

Mr. Bynum: Just one (1). Did Syngenta tell their employees that if this Bill passed that they would lose their jobs?

Mr. Ruiz: No.

Mr. Bynum: Then why have we leader that so much? Did you not just say that?

Mr. Ruiz: We will have to modify our operations if this Bill passes like it is.

Mr. Bynum: I am sorry?

Mr. Ruiz: We will probably have to modify our operations on the island if this Bill passes.

Mr. Bynum: If this Bill passes did you tell your employees that they would lose their jobs?

Mr. Ruiz: We will try to provide employment for as many employees as we possibly can.

Mr. Bynum: Do you think scaring people with fear of their jobs is the way to proceed to dialogue on this issue and come to common ground?

Chair Hooser: Okay, Councilmember. Why do not you answer the question and then we will move on.

Mr. Ruiz: I am just trying to present the facts as I see them and the likely outcomes if this Bill is passed.

Mr. Bynum: Thank you.

Chair Hooser: Next speaker.

DAN CONNERS: Aloha Council. My name is Dan Connors. I am a licensed applicator in the State of Hawai'i. I have worked in the seed industry for numerous years. I was also a licensed applicator in the State of California. I came here today to give my testimony in opposite to this Bill. I feel it is poorly written and it has divided our community. I think that after today's testimonies the

Council would agree that it is time for some level heads to prevail and everybody get together and find some solutions to these problems. One of the things that I would like to address that I find it pretty hard to believe that two hundred forty (240) sprays were applicated on one (1) field of corn. I think we all need to get together, do some sharing and some technical work, and come together with a solution to this problem. Thank you.

Chair Hooser:
Next speaker, please.

Thank you very much for your testimony.

ALFRED B. BALAURO: Good afternoon Council. My name is Alfred Balauro and I hear things like there are high rates of asthma and yet there is nothing in my family. I know that there is a lot of natural things that cause asthma. Like on this island we do have a lot of Albesia Trees. How come no studies are done on that? Also, I hear things like it is not really agricultural production or anything like that or there is no available land. All the land has been taken by the seed companies. There is a lot of land but they have to come up with a good business plan. There is a lot of land up there. The seed companies take a very small portion of it and when you craft this Bill, you say oh, it is about pesticide issues. But every time you folks are trying to block GMO research, that is all this Bill boils down to. If you are really serious about the pesticide issues and all of that, you would take out of GMO section and work on the pesticide issues. I think we can work on that. Thank you.

Chair Hooser:

Thank you very much. Next speaker please.

ROBIN ROBINSON: Good evening, Councilmembers. Thank you. For the record my name is Robin Robinson and for the record I oppose Bill No. 2491. For the record, I have an unblemished record of staunch heterosexuality and the reason I say that is because for the past twenty-seven (27) years, I have been an agronomist for the sugar as well as the corn company which has brought me in direct contact with pesticides or crop protection products. These products that we have been hearing over and over again, the label is the law and that is the truth. The label is the law and on the labels you will find that there is a maximum amount that can be applied to any crop in a year. I find it very hard to believe that these numbers that have been thrown out that we are over applying is incorrect because violating these laws carries some very stiff penalties, very stiff, even jail time from what I understand. I have had a Restricted-Use Pesticide Applicator's license for twenty-seven (27) years as well. It expires every five (5) years and every five (5) years I take the test again, just to prove that I know what I am doing. All of our programs are not strictly spray programs, that are integrated pest management programs. In other words, after we plant a field we do scouting. We check the fields over and over again for the amount of insects that are there, the type of insects because if there are beneficials, we do not spray. We do not want to kill the beneficials. I have actually had fields where I put the pre-emergent down and never returned again with the spray machine until harvest. We never put and fungicides, no insecticides. But then again, there are fields that we have had to spray again because our seed is valuable. We have very small amounts and we need to return them to the breeders. What we are learning is to manage our fields in such a way that we can minimize the virus and the vectors, like leaf hopper will spread the virus, leaf sucking type insect. So, the situation there is that we try to keep all of this under control by diligent methods. The scouting program is something that we use very carefully, very diligently, and we do not want to spray as much as possible. Thank you very much. That is all that I have.

Chair Hooser:
speaker, please.

Thank you for your testimony. Next

COLLIN DANA: My name is Collin Dana, native of Lāwā'i. We heard a lot about how this issue Bill is dividing our island and I would take issue with that. The Bill is not dividing our island, our island has been divided around this issue for quite some time. There has been a growing movement of concerned citizens looking for action. This Bill is the first sign of any action on this item. Now, the life of the land is perpetuated in righteousness. A lot of these blue shirts have the phrase "Ua Mau ke Ea o ka 'Aina i ka Pono" on the back of them. I take offense to that because literally, these companies in their course of business are in the industry of killing the life of the land and not perpetuating it. In a teaspoon of good soil you will find billions of different little creatures that you cannot see without a microscope, but those are literally the life of the land. Anyone who has been through school is familiar with the concept of a food web. Well, these are the very basic of a food web which sustains all life on earth. If your policy in growing food is to kill indiscriminately this food web, of course you will have pest problems. The natural balance of predator and prey is not in place. So, you are stuck in this endless cycle of applying pesticides which kill the pests maybe and everything else and it is not sustainable. It is chasing after – I do not know. It blows me away because it is a natural lifecycle that is in place in any part of this world before agriculture hits it, is self-sustainable. What we need to do is embrace these natural cycles and learn more about them instead of using our science to usurp and impose our own view of what should be going on. This has got to be the most inefficient way to grow food. The only reason it works is because we continually pump chemicals into it. This is not a sane approach to sustainability. I propose that Kaua'i could play a major role in the feeding of the world. How we do that is not by exporting whatever we happen to grow. How we do that is by exporting the knowledge of how to grow sustainably. We could become a mecca of sustainability, a place where sustainability is not just spoken, it is lived. There is no reason that Kaua'i cannot grow its timber, its food, and its medicine on-site with no external inputs.

Chair Hooser: Thank you very much. Next speaker, please. I would ask the people, the testifiers, to think about what you are saying and I would encourage you not to question the motives of either side, blue shirts or the red shirts. I think we should be over that by now, quite frankly. I believe that good people, regardless of what kind of shirts you are wearing, good people can look at the same issue and come to different conclusions. So, let us try to respect each other's different conclusions, not question that we are bad people on either side, and that we are all trying to do what is best for the community. I would just really appreciate it. I hope you believe that is where I am coming from and the rest of the Council. Thank you.

ELI PABLO: Thank you, maybe that is why I am wearing my white shirt today. I am neutral. Good afternoon, Councilmembers. I would like to thank you for giving me the opportunity to speak and to hear my testimony regarding Bill No. 2491. My name is Eli Pablo and for the record I am against Bill No. 2491. I am an employee of BEI on Kaua'i and our company sells fertilizers and agriculture and industrial chemicals. We serve both large, small, conventional, organic farmers, nurseries, landscapers, hotels, City and County, State, Federal, golf courses and homeowners. It used to be that sugar companies were our largest customer. When they exited the industry, coffee and seed corn companies basically replaced the business that we lost. They are now our largest customer, representing about sixty-nine percent (69%) of our total sales. These companies follow strict protocol and I know because I used to work for the seed corn company

for eight (8) months and I was in charge of weed control at that company. They have certified applicators on site adhering to product label instructions. They do know that the label is the law. Believe me, they do know. The product label is governed by both Federal and State agencies, we all know that. Any violations will result in some kind of citation or maybe a hefty fine. These companies cannot risk their reputation by not adhering to the law. I do not question the right to know, but I do question the buffer zone. With this buffer, it will leave very little acreage left to farm for these companies. Less acreage to me means less production which leads to lower revenues. This will probably and I am not sure that will force these companies to shut down their operations or relocate elsewhere. This could be a local or a corporate decision, I do not know. But we simply cannot let this happen. Kaua'i people will be without jobs if this does happen and Kaua'i will be without jobs creating a high percentage of the unemployed. This will not do good for the County as well as its Officials. This will cause financial stress on families which are some of the reasons for families to break up, abuse, and lead probably to poor health.

Chair Hooser: That is your three (3) minutes, your closing sentence and then I want to say Councilmember Kagawa has a question for you.

Mr. Pablo: Seed corn companies are great neighbors to our communities. I urge you to defeat Bill No. 2491.

Chair Hooser: Thank you.

Mr. Kagawa: Thank you, Chair. I am going to call him Coach because he was my Pop Warner Football coach and he was an excellent coach. Coach, I know you were a Manager with Ola Kele, I believe.

Mr. Pablo: Not the Manager, just the Field Superintendent. I would love to be the Manager.

Mr. Kagawa: Field Superintendent is for me a Manager. But when the sugar industry, how many employees approximately were immediately out of jobs? I mean just a rough figure? Was it six hundred (600), one thousand (1,000), two thousand (2,000)?

Mr. Pablo: Well, let us put this way, they had about two hundred (200) plus employees and I think might now they are only employees about thirty (30) so the rest were without jobs. They were picked up by seed corn companies, some of them moved off-island to find work.

Mr. Kagawa: Thank you.

Chair Hooser: Thank you very much for your testimony.

Mr. Pablo: Thank you.

Chair Hooser: Next testifier, please.

BYRON WONG: Good afternoon, my name is Bryon Wong, born and raised on the West Side. I worked for Syngenta for twenty-two (22) year and I was a licensed applicator for half (½) of those years. As far as pollen drift, I have a hard time throwing pollen from four (4) lines away. As far as the spraying, we go into the fields after we applied pesticides and we would do work in the fields.

That is twenty-two (22) years of working inside the corn field. I am strongly opposed to Bill No. 2491. Thank you for your time. *Mahalo*.

Chair Hooser:

Thank you, next speaker. We appreciate you getting to the main point and covering the main things. Thank you very much.

RICH HOEPPNER:

Aloha, Councilmembers. My name is Rich Hoeppner. After listening to many, many hours of testimony last Wednesday, the situation with GMO spraying is far, far worse than I ever imagined. You all listened to the Doctors talking about the spraying. You listened to the people that have been affected by the spraying. I hope you have read the medical reports that you were told about. I hope you have read the labels on the chemicals that are used and by their own admission on the label they tell what problems they can cause. I have heard testimony on both sides. There is a lot of things that we do not know, but if Bill No. 2491 is passed as written, it will inhibit any further action on stopping the problem with GMOs, which is the spraying for at least two (2) years. It will inhibit any further action. The chemical companies will continue spraying toxic chemicals until the EIS is done causing more pollution of our land, water, air and ocean, and inflicting many more cancers, birth defects and suffering on our people. The Council has an obligation to stop it. How, in good conscious, can you not amend this Bill to stop the spraying while the EIS is completed? I have no problem with GMO products. Let them grow their GMO products. We can choose what we eat, but the citizens on West Side do not have a choice when it comes to spray drift and the effect of those chemicals. Please amend this Bill to stop the spraying of toxic chemicals while the EIS is being completed. The world is watching what happens here. Will you stand up for the people or stand up for the chemical companies? It is your choice. Thank you very much.

Chair Hooser:

Thank you. Thank you for your testimony. Next speaker please. Ken Taylor, they are calling you, yes.

KEN TAYLOR:

Chair, members of Council, my name is Ken Taylor. First a little background on myself, I was certified as a Pest Control Advisor in 1971 in two (2) areas, one affecting landscape and agricultural products and weed control. Also I had a Certified Pesticide Application license and maintained those two (2) licenses for over twenty-five (25) years. I am here today in support of Bill No. 2491 and I want to thank Gary and Tim for bringing this forward. We have heard a lot and I just have a few questions to ask of you folks to think about. First of all we were told that GMOs would be reducing the use of pesticides and that was early on. I asked why has the use of pesticides in the United States gone up over three hundred percent (300%) since the 1990's? The only major change in agriculture during that period is GMOs. We do not know what the cumulative effects of these heavy applications are. We do not know the chemical effects of the different cocktails that are being made using a number of insecticides together and/or the stacking of a number of insecticides in the GMO plant itself. We know that the Federal government tests each of the products before they come to market, but one thing we also know is that they do not look at combining a number of pesticides and what are the effects? How much does things change when you do that? I do not know. You do not know. The Federal government does not know. I would be very surprised if the chemical companies out on the West Side have any idea of what is happening with these kinds of things. So, as you move forward in your deliberations, I think it is important to ask what are the cumulative effects of these different activities that are going on? In closing, I would just like to say that we do not have a lot of time left to learn the vital lesson that everything is connected. We can either use our God given intelligence or sit

back and wait for the natural systems that we depend on to collapse from our short cited abuse. Please pass Bill No. 2491. Thank you.

Chair Hooser:

Thank you.

ANNE PUNOHU: Aloha, my name is Anne Punohu. I was a registered applicator in 1989 to 1991 through Dupont. I still have any certificate somewhere lying around. I dealt with a chemical scarier than anything that you folks are dealing with today which is chlorine gas. Everybody in Kilauea is lucky that they are still alive since I was applying it there. I digress though. This issue is trying to be divisive, but it is not. It is a very simple issue about *‘ohana*. There is no separation between any of us in favor of the Bill as myself and those who are against the Bill. There is no separation in personality, conviction, or love for Kaua‘i or who is Kaua‘i and who is not Kauaian. It is silly. Who is going to lose their jobs? That is ridiculous. This Bill is not about losing jobs, this Bill is about the right to know, the right to protect the general public which is your mandate as public Officials, the tight for us to ask you to do so which is our right as citizens, and the right to regulate an industry which has now existed for twenty (20) years on Kaua‘i and in my opinion, has used many of us as petri dishes. I would really like to see some regulation happen. If you are a good company, you are not afraid of these things. If you are us, we are not afraid to ask it. I think the collaboration is there and cooperation can happen. I see no reason to preempt anyone from anything, case law is there, Federal on down. The other issues that have been brought up and which that I would like to bring up and it has been brought up by you, I think Nadine. There is no separation between the GMO end and the spraying application end. The chemicals and the genetic modification go together. They work hand in hand. You cannot really separate them. However, we can see the effects more clearly when you did spraying as I did. When we had to control around the plantation I actually have to leave the area because of my severe asthma. I am now experiencing severe asthma again after twenty (20) years. This is my second round in two (2) months and nobody knows why I am having the incidents. So, in total, this industry has not proven to the scientific community that it is not detrimental to the health, safety, and welfare the people it is being done around. This is not an area where there is no population and the people are feeling the effects, not only here but across the world. Regulation is happening in many Countries, in many States, and many Counties. This is not an unusual request that is being asked of Monsanto and Pioneer. This is now starting to turn the tables in many different directions. When you have something like this in twenty (20) years, things starts to come out and results start to happen. You start to have research that occurs, especially when you are talking about novel proteins which are new life forms, which are now being also introduced with the chemical as far as the chemical spraying. When you have Atrazine, I am a woman...

Chair Hooser: cut to your final sentence, please.

That is your three (3) minutes. If you can

Ms. Punohu: I am going really fast. When I was a woman I was pregnant on the plantation and I am fortunate enough to have not to be around this chemical mix. I would be concerned for the women working in this environment at this time. *Mahalo*, thank you all

Chair Hooser:

Thank you very much. Next speaker.

BRAIN WATSON: Hello Council, I am Brian Watson. I am a third generation farmer who is lucky enough to go to college and graduate school to study molecular biology and become a Scientist at Syngenta. Today though, I am

here as a citizen of Waimea, representing myself. I oppose Bill No. 2491 as written. I will try to be brief. I have no story. I am not going to attack the other side, that divide is already deep enough. It sounds like some form of this Bill will ultimately move forward and I want to urge you to get to the table with the seed industry to seek solutions, use information to seek these solution. I actually put together a small sample of information for your reference last night. It contains things – actually the EPA blue book on registering pesticides, some examples of pesticide labels that are used in commercial farming, pollen drift, water quality, health studies, and some miscellaneous studies regarding pesticides and health. I would like to pass this out to JoAnn actually because she had so much interest in the pollen drift and how it pertains to the GMO enclosure as part of the Bill. I do not want my neighbors to fear what we do. I really want them to feel safe. I hope as politicians that you can bridge the divide created in your community by this Bill by seeking solutions together. Thank you.

Chair Hooser: Thank you very much for your testimony. If you would be willing to meet, I would love to meet with you at a later time.

Mr. Watson: Absolutely.

Chair Hooser: Thank you. Mr. Tower, I think Councilmember Yukimura would like your card. Next speaker, please

MELISSA WATERS: Hello, my name is Melissa Waters and I oppose Bill No. 2491. I have lived and worked on the West Side of Kaua'i for the past two (2) years. Before moving to the island I lived in Illinois for twenty-nine (29) years. I grew up in a farming environment. I think the grounds for this Bill are unfounded. First, there is no scientifically proven data that says GMOs are dangerous or cause any harmful health effects. I have eaten genetically modified food for most of my life. I just had a health evaluation and I have been found very healthy. Second, there are no reasons for genetically modified (GM) crops to be close grown in a closed environment. Corn pollinates corn, soybeans are a self-pollinating crop. They are not going to pass the traits on to other plant or animals like a disease. There are precautions already taken to ensure that non-GM crops of the same type are not being pollinated by GM crops. Third, the five hundred (500) foot buffer zone is unnecessary. My home in Illinois was surrounded by corn and bean fields. I used to play in corn fields. I use the open areas between the rows as my playhouse. Almost every home in rural areas and outskirts on towns in the Mid-West are surrounded by fields. The towns themselves are surrounded by fields. The seventy-six thousand (76,000) farmers in Illinois alone lived in the middle of their middle of their fields. Do you think they would stay there if they thought that it was unsafe for their families? Do you believe that these seventy-six thousand (76,000) farmers are wrong and they do not know what they are planting or feeding their families? I know that these people are doing the right thing. I know these products are safe and I know that GMOs are not harmful. Lastly, there are already State and Federal laws and agencies that the corn companies have to abide by and report to. The information that these agencies collect are public record. People have access to all of it. I do not think that the corn companies should be required to send out this is what happened this week to the whole island newsletter. If someone wants the information, they have access to it. The companies already have safety rules and guidelines in place to protect their workers and communities near the fields. This information is also available. Passing this Bill would not only negatively affect the people working on the West Side, the County's budget, and the corn companies, it will also slow down the technology that is helping to feed the world. The bottom line is GMOs are safe, pesticides are already well-regulated and the data about spraying is available to the public. Again, I oppose Bill No. 2491.

of how this sacred land is treated. The 'āina which people consider as their 'ohana, their kua, and that which feeds us. *Mahalo*.

Chair Hooser: Thank you very much. It always seems to be long sentences at the end, but I appreciate the thought that goes into it. Next speaker please

ERIKA SCHNEIDER: *Aloha*.

Chair Hooser: *Aloha*.

Ms. Schneider: I have prepared some packets of information for all of you folks. I am here in support of Bill No. 2491. I would like to discuss the moratorium on open field GMO testing and give you folks some precedent and a little bit of information about Kaua'i's West Side and north west side, twenty-six thousand (26,000) acres of designated and new proposed critical habitat under the Endangered Species Act. On April 29, 2013, the U.S. Fish and Wildlife Division announced it was placing a moratorium on all GMO crops in wildlife refuge lands in ten (10) States, the entire southeast region of the United States. The same moratorium was already in place in twelve (12) northeast States and U.S. Fish and Wildlife is currently in litigation to ban GMO crops on Midwestern lands as well. This moratorium on all GMO crops including unregulated ones, is now in twenty-two (22) States. It is in effect until environmental assessments can be completed on the potential harm GMO crops pose to sensitive ecological environments in both human and wild habitats. There is particular concern about the impact GMO crops and pesticides pose to migratory birds and wetlands because they require substantially more applications of multiple pesticides. One of the primary issues with GMO crops in critical habitat is the heavy uses of glyphosate degrading the soil ecosystem and polluting the wetlands. The National Environmental Protection Agencies impact assessment analysis will focus on BT Corn and BT soybean varieties. Once those are completed those will be the only two (2) GMO crops that will be allowed on these Federal lands. Because the EPA will analyze several types and varieties of GMOs the document will be a programmatic environmental assessment. Once they complete that, this will decide if they move on to more detailed and specific Environmental Impact Studies. Detailed information about this process of doing the Environmental Impact Studies can be found at the CEQ website. Even prior to the moratorium, Regional Managers had an extensive application that they had to fill out to justify the use of GMO crops. I have attached a copy of that questionnaire with this report because I think it brings up important questions as to how much we should be regulating GMO crops on Kaua'i? For instance, we have forty-eight (48) protected species under the Environmental Protection Act and new lands that are designated critical habitat along the coast of the Waimea all the way up to Polihale are going to place GMO fields adjacent to critical habitat for these endangered species. I have also included a map of Kaua'i outlining the U.S. Fish and Wildlife Service designated proposed new critical habitat and old critical habitat.

Chair Hooser: That was your three (3) minutes. If you could close with your final sentence.

Ms. Schneider: Considering the step that U.S. Fish and Wildlife has taken to ban genetically modified crops temporarily until environmental assessments can be done, this is a very moderate and reasonable thing to do on Kaua'i where we have more endangered species than any of those other States. *Mahalo*.

Chair Hooser:

Thank you very much. Next speaker, please.

BRANDI TITUS:

Aloha.

Chair Hooser:

Aloha.

Ms. Titus: My name is Brandi Titus. I work in commercial agriculture. I am the Nursery Manager at Kaupea Farm in Kilauea. We farm organically, but I am not here to defend or promote organic farming. I am here to discuss the issue of genetically modified pollen being tested in the open air on this island. At the hearing last Wednesday I had a conversation with a gentleman who said he worked for Pioneer. I expressed my concern that pollen producing Genetically Modified Organisms not approved for human consumption are being tested in the open air here in this island. He asked me if I was growing corn and I said that I am trying to. He told me that corn pollen only travels four hundred (400) feet. I felt that was a very convenient number considering the five hundred (500) foot buffer zone this Bill is asking for. So, I decided to do research. From the Department of Agronomy website at Purdue University, I found that they recommend a six hundred sixty (660) foot buffer zone around the edges of non-GMO corn fields to prevent cross pollinating with genetically modified corn. So, is it four hundred (400) feet or six hundred sixty (6600) feet? On the same website of the Department of Agronomy at Purdue University, I found the following description of corn pollen. The yellow or white dust-like pollen that falls from a tassel represents millions of individual nearly microscopic spherical yellowish or whitish translucent pollen grains. Estimates of the total number of pollen grains produced per tassel range from two (2) to twenty-five million (25,000,000). Each pollen grain contains the male genetic material necessary for fertilizing the ovary of one potential kernel. The outer membrane is very thin. Once dispersed into the atmosphere pollen grains can remain viable for only a few minutes before they desiccate. Yet, with only a fifteen (15) miles per hour wind, pollen grains with travel as far as half a mile within those couple of minutes. So, is it four hundred (400) feet, is it six hundred sixty (660) feet, half a mile, or a mile? We are talking about corn pollen, experimental genetically modified corn pollen, being tested open air on this island. That is unacceptable to me. I do not think it could be contained. It is not fair to us. It is unacceptable. Please pass this Bill.

Chair Hooser: Thank you very much for your testimony. Members, I want to ask your indulgence if I could. Dr. Evslin was here twice as one of the resource people and had to leave. He has come back and he is here now today. Would it be okay if we asked him a question or two and then return to the public speakers? Dr. Evslin, could you come forward please? I apologize immensely because you asked me what time to be here and I told you 12:00 p.m., and then you came and then you had to leave and then you came back. I know how – anyway, thank you for coming. I have questions. Thank you. I know you testified in your three (3) minutes at the hearing on Wednesday and you had a long list of pedestrians on the island who shared your concerns. I think it was based on the American Academy of Pediatrics report. If you would take a moment and explain your concerns, I would appreciate it.

DR. LEE EVSLIN: Thank you. Thank you for allowing me to come late.

Chair Hooser:

If you could speak loudly please also.

Dr. Evslin: The American Academy of Pediatrics is a body that most of the board certified pediatricians in America belong to. They put

out policy statements on everything that touches the lives of the children we take care of, anything from immunizations to seatbelts, to any issue that is a pediatric issue. They convene expert panels basically on each of these subjects to give us their opinions. Of interest to me is November of 2012, they came out with first policy statement that I had seen on pesticides. It was twenty-nine (29) pages approximately, extremely difficult to wade through because it was mainly studies and basically what they were saying is that the evidence is increasingly emerging about chronic health implications from both accusative and chronic exposure. A growing body of epidemiologic evidence demonstrates associations between parental use of pesticides, particularly insecticides and then on and on to leukemia and so on. What they are trying to tell us is that there is a growing body of evidence that we really were not aware of before and that the research is pointing more and more. They went disease line and disease line, tumors, neural behavior, endocrinology, endocrinologic problems, that in all of these realms the evidence is growing that pesticides is playing a role and the risk factors which is in my mind, I am speaking to the blue shirts and the red shirts, the risk factors are exposure to children from home use. So, they are telling us Pediatricians talk about using pesticides in the house, outside yard use and using Round-Up and so forth on the grass and in the particular high-risk category is the children of the people that spray pesticides and that data is growing at a consistent rate essentially that occupational exposure, maternal and paternal, appear to be in largest risk category. I think that is a very important point. We have both sides of this issue, people who are involved in spraying this and the risk is to their children. I do not think these reports do not necessarily tell us how the risk is there. It is from their clothing, is it on their body? They are just bringing together the evidence essentially, that the children of people who spray pesticides are at greatest risk than those who do not spray pesticides, both if their mothers or fathers are sprayers. So, I thought that was of interest and then just one other piece of this. They are talking about what the Pediatricians should do about this. This is all fairly new for us. We have mandates about what we speak about when we see people for well-baby visits and I have never actually seen a mandate about pesticides before and they have now placed it into our lap basically, that we should be talking about spraying in the house. They say although there are no Federal mandates for notification of pesticide use in communities, many States, locales or schools have implemented requirements for posting warning signs or developing registries to alert individuals of planned pesticide applications, see Table 3. These are designed to allow the public to make decisions to avoid exposures during application or soon after from residues. Other local policies that have been developed include restricting spray zones that create buffers from schools or other areas or restrict specific types of pesticide products in schools. They are not talking about just the heavy pesticide use around school, they are actually talking about Round-Up and other products in the school grounds. They are asking us to use what they call Integrated Pest Management Systems in the schools. This is a big step in the way Pediatricians have looked at this. I mean, an analogy is that I am now anti-juice because juice makes people fat. I gave my kids – they grew up on POG. We did not know these things and these pieces of evidence come to us one by one and it is our responsibility to listen to the, use our instincts, and make a difference. So, they are, just seven (7) months ago, saying Pediatricians of the world and when I say Pediatricians of the world, although this is the American Academy of Pediatrics, the policy that is set in America is the policy that goes out to the world. So, this body carries a lot of weight and they are basically saying to the Pediatricians of the world, pay attention to this. These are dangerous substance, dangerous enough that they are even dangerous in your houses. Particularly be concerned about agricultural uses and one of the pieces of this is an increasing concern that the agricultural uses is even going it have more statistics that are worrisome to us.

Chair Hooser: If I could ask a question. First of all, thank you for coming back and sharing that. We have heard a lot of very compelling testimony from mothers and fathers who talk about we work in the fields every day, I am pregnant I was in the fields, I have children and they are all okay, and when I was little I used to run behind the DDT smoking joe and look at me, I am okay. You are saying though, what are you saying? How do you relate that to the information that the American Academy of Pediatrics is now saying?

Dr. Evslin: They have gone disease by disease here and you have to take fairly large populations to show the difference of. They are taking the studies that they have and they are showing that there are increase in leukemia, increase in brain tumors, and increase in behavioral difficulties in children that have been exposed either prenatally or post-natally. Behavioral issues are hard to quantify. We have behavior issues in a lot of kids who are sprayed and not sprayed. So, you have to put data together to actually know is it more in the children with parents that were sprayers or spraying near your house. It takes aggregates of data and one thing I would beg the Council to make sure happens is that we start collecting Kaua'i data. We should know cancer by zip code. We should know deformities, cleft palates and so on. They go to a certain clinic on O'ahu. That data is all there and it would be relatively easy for us to put that together zip code by zip code and we should have the data essentially. There is no reason in a small place like this, that we cannot.

Chair Hooser: Thank you. Other questions?
Councilmember Nakamura followed by Councilmember Kagawa.

Ms. Nakamura: Thank you very much for this practical guidance that is timely for this discussion. I wanted to follow-up on your ideas about getting more data, good data, and zip code-related data I think is really good. Are you familiar with the geothermal public health assessment done on the Big Island?

Dr. Evslin: Not in any depth. I have seen the title.

Ms. Nakamura: So, what the Mayor did there was convened a group of scientists and people very familiar with the issue on both sides of the very controversial geothermal issue, where they also have many health concerns about the hydrogen sulfide emissions, water quality impacts, and near-shore water impacts. They convened a Committee to look at the data that was most important to collect and then a methodology for how it should be collected and certain hypotheses about what they thought the concerns were so that a third-party neutral researcher could come in and then collect the data and present this information that would be guidance to decision-makers. I am looking into this and thinking there are some similarities for Kaua'i and I was wondering if this is something that you think we might want to embark on?

Dr. Evslin: Absolutely, most of all of that data looking back is there and then we ought to set up looking forward. For instance, we do not really have asthma statistic.

Chair Hooser: I cannot here you.

Dr. Evslin: We do not necessarily have asthma statistics. Asthma is one of the disease processes that they talk about is increasing with pesticide usage. We have cleft palate statistics, we have cardiac defects, and we have cancer statistics. We do not have the milder stuff. One, we should carve

these out and find that date. It is there and then going forward I actually think we should look at other things. We should look at behavioral diagnoses because these are the categories that we are worried about and asthma diagnoses. For instance, in all the years that I practiced in Līhu'e, I always thought Waimea had much less asthma than Hanalei. I always figure that Hanalei is wet, Waimea is dry and it makes sense. Now I am hearing that there is a lot of asthma in Waimea and I do not know how to interpret that because you have to put the data together. It would be interesting if that changed, that it may or may not have been. We are not going to know unless we actually take a look at it.

Ms. Nakamura: If we were to put or form such a Committee on Kaua'i, would you be interested or willing to serve on it?

Dr. Evslin: Yes, for sure.

Ms. Nakamura: That would be great, thank you.

Dr. Evslin: One other point about that is what the American Academy of Pediatrics is saying is we do not know enough. We are starting to see this data that is scaring us, we do not know what is really being sprayed because the public does not have the right in most places to know what is being sprayed. They are concerned because on the label is actually the active ingredients. They do not even list the inactive ingredients. They are saying that it is very possible that the inactive ingredients are playing a role in this. For example, Round Up, if someone gets sprayed inadvertently with Round Up, they very frequently develop respiratory distress and again, Round Up is thought to be safe. They are thinking it actually may be more of the inactive ingredients in the Round Up that solvents or petroleum based things that are actually causing the problem. So, they are claiming that we do not have enough data to know exactly even what we are talking about. They are suggesting that pediatricians to join grass roots organizations too. You have to understand that the American Academy of Pediatrics is a very conservative organization. They are not about radicalization of anything. But they are saying that this an important issue with pediatricians, listen to us and I think the pediatricians on Kaua'i are basically.

Chair Hooser: Thank you. Councilmember Kagawa.

Mr. Kagawa: Thank you. Doctor, have you brought up any of these concerns with the State Department of Health?

Dr. Evslin: No.

Mr. Kagawa: Well, I think they have more professionals than we do of course to evaluate that kind of information and they are partly responsible for overseeing the pesticide use and complaints. I had one person that reflected after the public hearing that we had and he was the only person that criticized everybody. He criticized the anti-GMO people, he criticized the seed companies, criticized us as household users of Drano and everything else, and he also criticized the medical industry for testifying. He said that your industry has major companies conducting chemical research at this very second and that your industry supports these chemical companies, and the chemical industry is getting sued more than probably the agricultural business. So, is that all fair? His question is how can you folks question these chemical companies when your industry is probably worse?

Dr. Evslin: I buy that. I think it is our responsibility to look at all of them and I do see a shift happening in the practitioners of the world and people of the world saying who are saying this has gone too far. We are pushing drugs way more than we need to push drugs. There are one hundred thousand (100,000) deaths a year from drugs, medications prescribed medications done in error, one hundred thousand (100,000). Do you know how many plane loads of people that is? Our industry is looking at it hard. So, I do not think the answer is do not look at it, the answer is really look it.

Mr. Kagawa: Thank you. Doctor, it is not to criticize you because you come up very humble and honest bringing up those concerns. But we had a lot of people that testified and on the basis. One of the glaring things that you brought up in your testimony was that when you first did a study on asthma, you said that the kids in Hanalei had had a higher rate of asthma.

Dr. Evslin: Yes, this was my perception as a Pediatrician.

Mr. Kagawa: Oh, just a perception?

Dr. Evslin: Yes. It just seemed to me that we saw a lot more asthma north of Kapa'a. I used to tell people to go live in Waimea because it was drier and they would have less asthma was my feeling. So, I heard all of these Pediatricians talking about of the asthma down there and I was thinking that it would be interesting to know what these instance are. This is all anecdote. It does not have much value to it.

Mr. Kagawa: Myself, too, I think if we could because most kids with bad asthma need to get treated with steroids or whatever they use to help them breathe. If we can get into that direction, I think we can come to see some trends or not, but without that kind of anecdotal data then it is hard to justify.

Dr. Evslin: In medical history, anecdotes make you know what to study. So, people get together and say, I noticed – like when they discovered penicillin. They just has this mold on the plate and they saw that it was killing bacteria, that is an anecdote and then they study. So, I do think that anecdotes have value because they direct you to where to study. But that is all their value. You do not make scientific decisions out of anecdotes basically.

Mr. Kagawa: Thank you, Doctor.

Chair Hooser: Thank you for taking the time and you are in support the measure?

Dr. Evslin: Yes, I am.

Chair Hooser: Thank you very much, Dr. Evslin. It is 6:00 p.m. and we are going to continue with our public testimony and so the next registered speaker. We are doing public testimony now. This is not a question and answer period, sir. The audience is not invited to interject into the Council proceedings. It is just the rules. It is not more than that. Thank you. Would the next registered speaker please be called?

HOPE KALLAI: Aloha, Council. Thank you for staying late again. I have submitted this testimony online so hopefully you have gotten it and I will just hit a couple of points. I think Chairperson Furfaro spoke about House

Resolution (H.R.) 100 and it was presented this year by Representative Cynthia Thielen who said it is crucial that the State may every effort to protect our residents, our *‘āina*, our oceans from the potential adverse effects from chronic Atrazine exposure.” Historically in Hawai‘i waiting to investigate pesticide or chemical exposure has resulted in needless tragedy and clean ups. We need more information and we need it now. The name of the Resolution was requesting the Director of Health to develop partnerships to address the data gap on air, surface water, and near shore effects on Atrazine. I understand that the State Department of Agriculture does not test for Atrazine because there is a shortage of inspectors. Companies using Atrazine in Hawai‘i are policing themselves in regard to EPA compliance. If we are not testing consistently, then how can we know that these companies are following EPA prescribed protocols? The fact that Atrazine is banned in Europe due to ground water contamination risks should be a red flag for all of us, said Representative Thielen. The Atrazine Task Force is expected to be presented to the legislature by October 31, 2013, trick-or-treat. I think I also heard that the EPA is reviewing the registration that was touched already before. But Atrazine has been detected in the drinking water in Kaua‘i in traces since the mid 1980’s. The City of Greenville, Illinois brought a class-action suit against Syngenta for Atrazine toxicity of public drinking waters along with one thousand nine hundred (1,900) other municipalities. County of Kaua‘i Department of Water entered into the suit and received six thousand six hundred ninety-two dollars and ninety-six cents (\$6,692.96) for Atrazine in the County’s drinking water supply as part of the one hundred five million dollars (\$105,000,000) class action settlement. A trace settlement for trace amounts of Atrazine toxicity to a trace amount of folks compared to the mainland folks. Trace, but existent and a red flag concern. The Department of Water Board was barred from suing or joining any other suit regarding the presence of Atrazine in drinking water supply or substance for the next ten (10) years. Department of Water Board Secretary, Randal Nishimura, expressed concerns about the potential problems in the future by settling now. You folks have my full testimony and the main thing is that there are gaps. We do not know everything and this is becoming more evident. The EPA has received twenty (20) new medical reports on medical complications because of this chemical. The the first time it showed up was 1984 and the first time it was used I think here was right after statehood.

Chair Hooser:
sentence.

That is your three (3) minutes, your final

Ms. Kallai: If there is a thirty (30) year transit time from the surface to the groundwater table, when are we going to test for the past decade of all of these tons of use? We do not know where it is going to show up.

Chair Hooser:
Next speaker, please.

Thank you very much for your testimony.

TIM KALLAI: Aloha Council. Tim Kallai, for the record. My testimony here today is going to be a personal one. I know the last time I came I was acting as a board member reading a statement on behalf of the Kilauea Neighborhood Association (KNA). But today, my concerns I guess are just dealing with looking at industries in particular and how their operations unfold. Now, I do know that maybe at the heart of their intention, they are trying to come off as being philanthropic, feeding the world this and that. I find it kind of disturbing that we are doing this for the world and yet here on Kaua‘i we are importing most of our food. That leads me to question, why do we not want to deal with our own folks here at home first in dealing with these things? Above and beyond that too, history has shown with the due lapse of time that sometimes it is ten (10) years, fifteen

(15), or a couple of decades that the true facts behind some of the practices of what we use or what they use and these terms do not have a tendency of showing up and at that point, what do we do? How do you question things like this? The difficulty that I have personally dealing with any of this issue and I am constantly grappling with because my heart goes out to all of the folks on West Side. The last thing that I want to do is displace anybody from earning an honest wage and providing for their '*ohana*, that is the last thing that I would want to do. But yet on my other side, what I am struggling with constantly is trying to interpret how do I come to the concession that I am poisoning '*aina* for the sake of providing for my family? I say once again, if we are looking at history with these industries, what will happen in ten (10), fifteen (15) years? How will this affect our children, our grandchildren, their grandchildren? This is what worries me because unfortunately, we are just living in the present, the now trying to struggle to get by, make a living like you said for our families. But how are we going to provide for future generations if our '*aina* is dead and we cannot do anything? If you oceans are depleted and the fishing is gone? Something which is at the heart of everybody in this culture to deal with, that is our freezer box. If it is *pau* and it is gone, how do we bring that back? These things worry me. I do applaud you once again for taking a look at all of this and deciphering all of this information which has been insurmountable on both sides. I can only thank you for taking the time and looking at this issue, regardless of how the outcome. I think that you have literally given us an opportunity to raise our awareness and consciousness. *Mahalo nui*.

Chair Hooser: Thank you very much. Next speaker, please.
We are pushing the caption break a little bit, so we want to be timely if we could.

ELAINE DUNBAR: Good evening, Elaine Dunbar. I would just like to say that the scope and quality of the questioning of the experts today was very impressive. I really liked what I heard from Council. Councilmembers Hooser and Bynum on July 31, 2013 the introduction of the Bill, you requested a lot of responses from Pioneer I guess it was and because you stated that there were several months that you were trying to get information and it was not forthcoming. I was not able to hear that today. If you were able to receive anything that you stated that you wanted to be at the next hearing? Did they provide that information?

Chair Hooser: We are not going to engage in a dialogue. I will summarize that at the very end. I will address...

Ms. Dunbar: Alright, that is all I wanted to ask because I could not hear downstairs today.

Chair Hooser: I will address your question at the end.

Ms. Dunbar: Alright, thank you.

Chair Hooser: Thank you. Next speaker, please

RUBY STAGGERS: Hi. My name is Ruby Staggers. Can you hear me?

Chair Hooser: As loud as you can, please.

Ms. Staggers: My name is Ruby Staygers and I am speaking for myself and my family. I do not have anything prepared because I thought I will just speak from the heart. I could have just come here with a ton of

statistics, but I was there on Wednesday and I heard the testimonies. I heard both sides and I can understand the side from the farmers because I come from a family of farmers. I grew up on Lānaʻi where they used pesticides, heavy amounts of it, and a high percentage of the people that I know have dying of cancer. It would be one thing if these people, these biochemical corporations, existed in a vacuum. But you know what, we share the same air. We have to breathe this stuff. We have to give water to our kids. I mean, God be responsible. Be responsible and think if there is some truth to what these doctors, nurses, and scientists are saying, question that, do your own research and dig it up. Dig up your own research, find out for yourself, cross reference what you know and question. These corporations that give you a paycheck...

Chair Hooser:

Move the microphone a little bit away.

Ms. Staggers: These corporations that give you a paycheck, I understand the need to feed your family, but be a responsible citizen. I have heard people go oh, look at me, I am strong. I have been exposed to these chemicals for years. But my God, look at all the other evidence that suggests otherwise. Look at people dying of cancer and just go wait, this Bill is reasonable. We are just asking for these corporations to provide disclosure. It is disclosure we are talking about. We are not trying to take away peoples' jobs. We have to live here, too. I want to boycott America because it just pisses me off to have to live here and I kind of want to because I feel like if this Bill does not pass I am going to have to protect my kids and luckily they have dual citizenship so we can go to the United Kingdom. I wish I could just gather everybody that I knew because we are powerful as one and just boycott everybody that carries GMO products and pesticides, the ones that you find in your back yards. I wish I could do that, but I cannot do this alone. Thank you for doing this because it is a responsible thing. I do have a problem with the buffer zone, I think they should be much larger. The bee are dying. The bees are dying and once they die human population will die.

Chair Hooser: Thank you. That is your three (3) minutes, if you could sum up. I really appreciate you being here, thank you. Next speaker please. Next speaker please. I mean, if no one stands up, let us go to the next speaker. Keep reading. It is the last speaker. Oh, I am sorry. Titus is first and then Arthur. Come forward please. I do not mean to rush people, but we were calling your names. So, speak.

TITUS BONTEA: My name is Titus Bontea. I would like to take the opportunity to thank you, the Council, for your endless patience. It has been a long. In my previous testimony I touched on a mathematical concept of (inaudible) which simply states that when you deal with a modified complex system the entities are unpredictable. I will not cover the same ground again, except to emphasize this unpredictability makes the cost-benefit analysis impossible. You cannot say it is good or bad because you cannot predict. However, what I would like to speak about is the five hundred (500) foot buffer zones. The number really belongs to Mr. Roger's neighborhood, the land of make believe because – and I am speaking to you as a former Navy Officer who has trained in nuclear defense and fall out. The mechanics are the same, the poisons are different, but the mechanics are the same. The only thing that matters are the three (3) elements: the direction of the wind, the strength of the wind, and the contamination amounts. No Navy Officer or Commander would put his troops in danger by saying that they are outside the five hundred (500) foot zone, but my soldiers are dying. This is, probably ministry of Defense that has templates or used to use templates. It was a transparency that you put over the map, orient it for the wind direction and it tells you where you should or should not be and the same should apply. It is pretty

simple to do. Anyway, in conclusion, ultimately this is really a philosophical question. It looks to me that you are willing to give our right hand in order to become ambidextrous. Mother Nature does not adapt to us. We have to adapt to Mother Nature and our evolution took a long time, long time. I do not think you will be able to adapt in one (1) generation. For myself, close to seventy (70), maybe I should not personally care. But the next generation is not going to adapt in a short time. So, that is about all I have. Thank you.

Chair Hooser:

Thank you very much. Next speaker.

ARTHUR BRUN: Good evening, Council. For the record Arthur Brun not representing anybody but myself and my community. I am strongly opposed to Bill No. 2491. There is just too much stuff in it with the buffer zone and all these other stuff, five hundred (500) foot buffer. I live right in Waimea. I make Hawaiian salt on my back porch. I use that Hawaiian salt to make meat, companies are spraying chemicals around there and I am not sick. I am still eating that Hawaiian salt like everybody else, nothing wrong with me. My wife was pregnant with three (3) of our kids while working at the corn company in the fields. The three (3) kids came out real healthy and nothing is wrong with them. I worked there for almost nine (9) years. The right to know, yes, I give you that. But just this five hundred (500) foot buffer, GMOs, we need GMOs. We need to feed the world. As far as jobs, I can lose my job, I can move to O'ahu and do my other business and survive. It is not about a job. It is about what we are doing is right for the people and for the community. We follow all of the laws that we need to follow, everything is done by the label, by the people. We live here, born and raised here. There is a lot of land on the East Side, do organic. I have nothing against organic, I have nothing against organic. I just choose to eat GMOs. That is what I feed my family. I have five (5) kids and we are healthy, one (1) son has diabetes from when he was eight (8) years old. We needed GMOs to make his insulin and that is what I touched on the last time. We should spend our money and our time doing things that we can control that has facts behind it. Secondhand smoke causes cancer, do a Bill. No smoking. Get rid of smoking on Kaua'i. I am all for that, that has facts behind it. A lot of these facts is based on emotions, not facts. Organic people died, organic lettuce from human feces. Berries at Costco, cat feces, there was the spinach and I think there was one more, all organic. You did not hear of anybody – facts now, I am talking facts, not I know this guy died of cancer because – I am talking about facts, proven facts. Nobody died from GMOs. Nobody. Zero (0). People have died from organics and that is facts, that is not my belief or whatever. It is facts that are out there. Please, control something that we can like the smoking, things that we can control that is proven to kill people.

Chair Hooser:
sentence, if you would like.

Thank you very much. Your closing

Mr. Brun:

That is.

Chair Hooser:

Thank you very much.

Mr. Brun:

Thank you.

Chair Hooser:

Any other registered speakers?

ANGELA HUGHES: Good evening, distinguished Councilmembers. Thank you for your time this confessed he was an undercover corporate guy. He does not tell anybody on Kaua'i, but he gave me his opinion where Kaua'i was chosen for the current operations going on with the companies

here. He said in the third world there are similar places with rich soil and year round growing conditions where they could have workers for approximately a third of the labor costs. Why would they choose to take on three (3) times the cost for labor? Well, we have a lack of regulations here that is actually more auspicious for these practices. For example, some of the things that they are doing, they would not be allowed to do in Mexico. Also we give them large tax breaks. I thought that was interesting. We are talking a lot about Kaua'i jobs. Well, we have approximately two percent (2%) of the jobs are tied up in these interests and I do not see that as something that is unsurmountable for us in the event that something did happen to those jobs. I think with all the huge community support of helping with the health and safety, we could do something for them by absorbing them or creating other interests. I wanted to speak about the questions we are asking these companies. I feel like we are looking at things backward at times. It is not about the impact to current business that should be our number one focus. The number one focus should be the health and safety. So, we do not look at what is the basic to business and then form regulations based on that. We look at what is the health and safety implications and then using the precautionary principle, look at what we need to do for regulation and if we can do anything to help with business by all means, after that has been addressed. So, as far as long-term job security, what about the legacy that these companies leave behind them? If we look at places that they worked before where the soil is actually infertile, dead, poisoned, and not able to grow things any longer? What happens how many years down the road? How are we going to have jobs for these agriculture workers if the soil has been ruined? Are they just going to ship shop, move up shop somewhere else on this island or another island? What do we do when we are left, when they decide to go or if they just move somewhere else and do the same thing to the soil and water? I think it is really important to look at big-picture, decades down the road and see what is happening to the soil and what is happening to the water because the soil and the water are a big part of what keeps us going. It regards to money and us feeding ourselves and being connected to the environment. I want to give with the last couple of seconds, I am not sure how long I have. But I want to use that to give you a big *mahalo* and I have been really, really impressed with how the community is stepping up and the infinite patience that I see with the Councilmembers here, for all of you that are present.

Chair Hooser:

Thank you very much. Next speaker.

CHRISTINE MATTOS: Hello. My name is Christine Mattos and I was born and raised in Kaua'i, Kekaha Gardens. I live there all my life and I oppose this Bill. I started working at Syngenta when I was a sophomore attending Waimea High School. It started out as a part-time after school job. But it did not take me long to realize how much I really enjoyed the work that I did and the people who I worked with. Coming from a big family, we have eight (8) kids, we knew that if we wanted to go to college, we had to pay for it ourselves. So, thankfully with the help of Syngenta I was able to come back every summer and winter vacation and I was able to pay for my college tuition and put myself through school. When I graduated from UH Manoa with a degree in Elementary Education, I was not quite ready to be a teacher and I was offered a position with Syngenta as a Research Assistant (RA). I was skeptical to take the leap from working out in the fields to being a Research Assistant. But again, it did not take me long to remember how much I believed in the work that I did and the people that I worked with. As a RA I work with regulated traits and according to this Bill, I would have to grow my projects in greenhouses. We have neither the means nor the money to build these greenhouses to support my projects. In addition to that the five hundred (500) foot buffer proposed by the Bill would wipe out a vast majority of the land that we farm. Syngenta would not be able to operate, hundreds would be out of a job, agriculture

on the West Side of Kaua'i and be destroyed. Hearing these testimonies and seeing it on the newspaper and social media, it is frustrating that so much misinformation is circulating. The products that we use go through rigorous testing, years of testing, before they are proven safe. We are regulated on multiple levels including the State and Federal. You say you want some facts, here are some facts. According to United Health Foundation, Hawai'i was declared the second healthiest State in the Nation in 2012. It was ranked third in 2011 and fifth in 2010 and 2009. The Center for Disease Control (CDC) in their 2012 study shows Hawai'i with the fifth lowest cancer rate in the Country. Furthermore, the National Cancer Institute states that the County of Kaua'i has lowest incidence of cancer in the State of Hawai'i. In closing what we do is safe and regulated. We protect the safety and health of ourselves, our employees, our community, and our island. My name is Tina Mattos and I oppose this Bill. Thank you.

Chair Hooser: Thank you very much for your testimony. Are there any other registered speakers? Has everyone had the opportunity to speak? Would you come forward? Introduce yourself and we are kind of running really close to the clock here. I do not mean to rush you. But he is going to have to change the tape shortly.

DUSTIN BARCA: Aloha, 'Ohana o Kaua'i. I swear every time we have these meetings I learn something new that is somewhat disturbing to me. But did I learn right today that we spray four (4) times more pesticides than anywhere in our Nation?

Mr. Bynum:

More than that.

Mr. Barca: I mean for an island this small where our natural resources is kind of everything that we have, it is a serious, serious, serious fact. That is terrorism on our island, I must say. Chemicals and pesticides are nothing more than unhealthy to nature and this Bill is not about GMO really other than the fact that we might learn what they are doing in secrecy. This Bill has to do with health, five hundred (500) buffer zones is nothing. We have trade winds every day. California, the buffer zone a quarter of a mile. If you ever go to California, I go there quite often, and there is no wind in California, really. So, to argue that that part of the Bill alone is crazy. Do you know what I mean? It is like taking advantage of Hawaiian Homelands and the uneducation of the people, the way I see it. This is not sustainability. Sustainability to me is feeding the people where you live. Nothing here is created for food basis. Nothing feeds our people that these people are doing. The future of this island is about feeding our people and keeping our natural resources sustainable, that is sustainability, keeping our natural resources sustainable for the next generation and the next generation. You hear a lot of fear mongering, fear mongering and these guys fear mongering. Their commercials are fear mongering, they call our house with fear mongering. Do you these people to lose their jobs? They do not talk about poison. They do not talk about keeping buffer zones away from communities and schools and the health. They talk about jobs. Jobs come and go all around the world. The solutions, that is the things that matter. I just think that this Bill is commonsense. I am one hundred fifty percent (150%) for this Bill. I think the buffer zone should be more for the people who live in those communities. Look at places like California with no winds, look at the buffer zones, and look at the facts behind other places. I feel like it is taking advantage of the uneducation of the island or something and this Bill is nothing more than protecting the future of the island, the people, the land, and the water. That is all we have. Thank you folks very much. *Mahalo nui.*

The following registered speaker was called but not present when called to testify:

1. Ipo Mokiao

Chair Hooser: Thank you very much. I believe that is the final speaker. I believe everybody has had the opportunity to speak.

There being no further testimony, the meeting was called back to order, and provided as follows:

Chair Hooser: I am going to suggest that we defer the Committee until two (2) weeks from today, that is another Monday. There was a lot of people here, representatives from the companies particularly, Farm Bureau, Kaua'i Coffee, that were going to answer questions and we can do that on the August 19, 2013 and then take further testimony. That would be my suggestion. Yes Councilmember?

Mr. Kagawa: I have a suggestion that we defer until the County Attorney's opinion and legal review is ready to be disclosed to the public. I am just thinking why are we going to continue to just keep going in this direction if the opinion may come out that tells our members that the County Attorney does not feel like this Bill would be okay as is? There are other avenues to try and get the buffer zones and get the right to know done by working together with the people that currently have jurisdiction over it. I have spent time with some of our Kaua'i legislators and I believe they have heard the public. They have heard the concerns and I think they are willing to step up to the table along with some of our members. I know Councilmember Nakamura had this idea of having a roundtable of experts, for and against, to have these discussions as to how we can work together and come up with something that at least for now we can live with and be satisfied with. Like I said, a Bill as-is, I would really like to have that legal opinion and review disclosed to the public. I think it is the right thing to do for us in order to move forward. I have no idea from the County Attorney, who is right here, as is to what would be the sufficient date. But perhaps we could get that date. That is my suggestion.

Chair Hooser: I would like to respond, if I could? I agree ultimately we need a sound Attorney opinion. However, I think there is useful information to be had as we move forward because the Bill is a work in progress. It has several parts and maybe some parts are stronger and weaker than other parts. I think we owe it to community to continue asking questions and to continue to exploring and to continue to look for solutions. Since we are not sure when the County Attorney, I would view waiting until that point as not supportive of passage of the Bill ultimately and we are free to amend the Bill as we see the Attorney's opinion and more testimony. I would like to see us continue asking questions, continue learning, continue exploring the issue, and ultimately offer amendments to the Bill that will make it legally sound and offer protections to the community without negatively impacting the economy. I think that if that is our goal, I would we suggest that we defer for two (2) weeks and then talk to the seed companies and the others while the County Attorney continues working on this measure. That would be my suggestion, other members?

Mr. Rapozo: We had a briefing in Executive Session and we heard from Attorneys from both sides of the issue which was again, please pretty interesting because our Attorneys are not them. At the end of the day, my reliance will be not only on the County Attorney, but the Attorney General. I think the Attorney General plays a key role as it relates to the preemption issue. I think we

got assurance from the County Attorney that it would take about sixty (60) days to get the opinion. I know somebody testified that the Bill was not the divider of the community, but I disagree. I think it is, if not for this Bill, it would not be us against them. If not for the Bill, what it has evolved to, it would not be the red shirts versus the blue shirts. What I would like to see, I like the one gentleman although he did testify on one side, and he wore a white shirt. But that is what I would like to see, the white shirts coming together. I think Councilmember Nakamura – or pink or whatever color. Councilmember Nakamura brought up the geothermal public health assessment which was done on the Big Island. This was done because their Mayor felt that the County needed more information. I think what we got out of today's hearing there is a lot that we do not know. I think that is pretty clear. Even Dr. Evslin said there is a lot we do not know. But this study or this assessment was done to determine what could be the effects of geothermal on the Big Island. I am very interested in pursuing this angle and what was the most disturbing thing today I think for probably most of us, if not all of us, was the State. I do not blame the three (3) individuals that were here because it is not their decision to not give them the resources that they need. I mean that is the Governor, the legislature, all of our elected officials at the State level who profess that health and safety are priorities, that is living proof today it is not true. That was the most disturbing thing today and I am jotting down notes as we go along and on my iPad trying to research some things. But this County time and time again has stepped up to the plate to subsidize the State in issues that we felt were important whether it is social programs and so forth. What will it take to get more inspectors here? What would it take to properly enforce the regulations that exist? I heard Mr. Furfaro say he is willing to help and I think that is something that we have to do. This County is going to have to step up and put some money like we did for the Air Quality Study and all of these other things to get more feet on the ground here so that we can do proper inspections. Then the other phase of this is that we have to get to our legislators and let them know the reporting of what is being sold is really useless, it is what you used. But those are issue that we have to deal with the State. This County, I think, can be the vehicle for that change. I have some serious legal concern and I know a lot of you do not want to hear that. I will accused of punting or whatever it is, but the reality is that we have to deal with the aftermath of that actin that we take on this table. I have heard enough, believe me. Our research are not only limited to what we talk about at this table, I actually do a lot of work when we are not here whether it is talking to Attorneys or doing research on my own. But there is some real legal issues that many of you may not want to acknowledge. But there are. It is very easy when an Attorney comes up, Earthjustice will come up and say says oh, no, that is no and then the seed company Attorney says yes, yes because they are attorneys. So what, that just means that they went to a lot of school and they have good memory. The reality is when you look at cases and they can rattle off call all the cases they want, but when you read the case and the have not it, not all it of it. But I plan to, we do not know. It is different. It is apples and organs. We could be talking about apples and oranges. So, there is a lot of work that we have to do. The question is when do we want to do it? I think the legal issue has to be clarified. It has to be cleared up and I think it needs to be done soon. I would ask the County Attorney's Office if they could expedite to thirty (30) days. I know he said in sixty (60) days and thirty (30) days, can we allocate the resources necessary to expedite this to thirty (30) days? I would defer a deferral, Mr. Kagawa. I would definitely support a deferral for thirty (30) days. I would have a hard time deferring this for sixty (60) days and I know it is a lot of pressure and if cannot be done, it cannot be done. If they have to come back and say that they are not ready, at least we have the opportunity to have the discussion on the floor in a month. I think two (2) weeks is too soon. I could definitely support a deferral for a month. Again, put the pressure on the County Attorney's Office to get something done and in addition now, to the Attorney

General. I can tell you all of you when I asked for an opinion from the Attorney General on the Transient Vacation Rental (TVR) issue, it took a long time. I do not know if we can put pressure on them and that is where you folks all come in. Call your Governor's Office and E-mail the Governor's Office like you do to us and let them know, that it is a serious issue. In a month, I would hope that the community can come together at some point and start healing and trying to work to some kind of resolution, not resolution in the issue, but resolution as far as helping us get a Bill that will work and not end up in court. Again, I do not want to see Kaua'i be the vehicle for the lawsuit to determine case law at our taxpayers' expense. I do not think that is the right way to go. Thank you, Mr. Chair.

Ms. Nakamura: Thank you. I guess if it is between two (2) weeks and two (2) months, I think I would go ahead with the one (1) month deferral. There are certain things that I still want to explore more. The pesticide management of seed corn companies, best management practices with respect to grading and grubbing. I would like to get the Department of Public Works feedback on Bill implementation and cost. I would also like to kind of take a look at – to study what happens post GMO to our soils and our waters. But I think what frames future discussion is what we hear back from the County Attorneys and the State Attorney General. I value that future discussion and I can support a one (1) month deferral.

Chair Hooser: I would like to speak and then I will ask Councilmember Bynum after the Committee has a little bit more discussion, if we could? This decision is our decision to make. It is not the County Attorney's decision. It is not the Attorney General's decision. It is the Council's decision. I understand that we have to weigh the risks of cost in court but I also do not appreciate being bullied by big companies who bring in the big lawyers who say we are going to sue you if you do not do what we tell you to do. We make the decision. There are a number of Attorney General decisions overturned by the courts, a number of County Attorney's decisions that have been overturned by the court. There comes a time when we need to step forward and represent the people in our community. So, that is where I am coming from. A sixty (60) day deferral I would see as a mechanism to kill the Bill, waiting for the County Attorney's opinion. If we continue to work on the Bill, we can work on the Bill and craft it in a manner that complies with the law that will sustain and be defensible in court and protect our community, protect the environment, and preserve the jobs. I am clear on that, if we work on it. In we want it to happen, it can happen if we work on it. I appreciate Councilmember's Rapozo suggestion for a month. I was hoping for two (2) weeks and do real work. But if we do it in a month, I would ask that the Councilmembers be prepared to vote in a month, offer amendments if you would like or vote it up or down in a month and not kill this Bill via deferral. If you do not like the Bill, we vote it up or down, amend it as you wish, and we move on. That would be my suggestion. I would support the thirty (30) days if we all agree on that. I would like to offer Councilmember Bynum, as a non-Committee member, as chance to talk and then if somebody wants to make a motion, they can make a motion. Go ahead.

Mr. Bynum: Well, this is the day we started working on the Bill and I saw a lot of work that I want to do. The State folks talked about language that would prevent KISC citric as-needed. That is the kind of things that comes up when you write a complex Bill like this. You learn, you write, you make revisions, that is one thing to work on. I am in dialogue with Kaua'i Coffee about how this impacts their operations and how we can work together. The difference of the response from the seed companies and Kaua'i Coffee could not be more different. Seed companies, you do not have a right to do this. It is trade secrets, we are going to sue you. We do not want to talk. Kaua'i Coffee says we are community member,

let us work this out. This will impact our operations, but we are about producing a product for Kaua'i and let us work together in the community to find this out. You want to know what pesticides we use? We use this one and this one. This is how often we spray. That is the kind of response I am getting from Kaua'i Coffee. We say these maps with the boundaries showing that and they testified that it would take away ninety percent (90%) of their land. There are internal roads there that are included, drainage ditches, and we need to work on that language. We need to work on this Bill to make it work for all us. Now, anybody that has followed County politicks for a long time knows this is in Committee right now and I am not a voting member. A Committee cannot kill a Bill. They can only make recommendations to the full Council. But what they can do is delay, defer, and drag it on. This certainly has engaged our community. I do not think it has divided our community. I think these issues were happening and this Bill certainly brought it to fruition, an important discussion that we need to have. But if this Committee chooses to defer this more than our normal two (2) weeks, it is a decision to not to continue to work on this Bill, right? This Committee could defer it indefinitely and just sideline it. That has happened to County legislation plenty of times. I like this Council. These are smart men and women. Let us work on this Bill. Let us meet in two (2) weeks and do the work we were hired to do. Otherwise, we are not working for it. Last thing I want to say really quickly, this County Attorney opinion. I have been the biggest advocate for ten (10) years, everybody knows that, to release County Attorney opinions, but not everyone. This particular opinion is like what you would expect, the County Attorney saying here is what you can do and cannot do under the law and speculating about what our legal challenges might be, what the arguments are? That is typically what these are. You do not disclose that. I will not vote to disclose this Bill. I do not believe that the County Attorney will recommend disclosing it. That should not even be a discussion here. In the long run, the Attorney General may or may not offer us an opinion. They do not have to respond to us. They may, that would be helpful. But in the long run, they are all opinions. The responsibility lies with us. As Mr. Hooser has said, there are lots of examples in Hawai'i law where the Attorney General was overturned by the Supreme Court. Mr. Alston said it, a dispute this big, if they choose, we have the courts to resolve it, not opinions from Attorney General or Mauna Kea Trask, as much as I admire him. They are just opinions. In the long run it comes to us. Please continue to work on this Bill in Committee.

Chair Hooser:

Is there a motion?

Mr. Kagawa moved to defer Bill No. 2491 to September 4, 2013 pending County Attorney's opinion, seconded by Mr. Rapozo.

Chair Hooser: That is a good question. Could we assume the motion is for thirty (30) days and asking the County Attorney to have an opinion, if possible in thirty (30) days? But regardless, it is a thirty (30) day deferral and we meet regardless of whether the opinion is ready for not? Can we assume that?

Mr. Rapozo:

What is thirty (30) days?

JADE K. FOUNTAIN-TANIGAWA, Deputy County Clerk:

September 4, 2013 which is a Wednesday, a regular Committee day.

Mr. Kagawa: I would say thirty (30) days is fine and I hope to have the review ready. If it is not ready, we will discuss anyway and not

waste the day. I would be willing to vote on that day, I would be willing to vote on that day if you want to vote.

Chair Hooser:

Is there a second.

Mr. Rapozo: There was a second. I am just trying to clarify, is it going to be specific to September 4, 2013? Would the Chair want this on a Wednesday?

Chair Hooser: What does the Committee want? The Chair is not getting what he wants. What do you folks want to do? We could do it on a Monday and it would be better.

Mr. Rapozo: I just think we should have a special day.

Chair Hooser: Can we do it on the Monday preceding the day.

Mr. Rapozo: It is Labor Day.

Ms. Fountain-Tanigawa: We could do it September 9, 2013 on a Monday.

Chair Hooser: Tuesday?

Ms. Fountain-Tanigawa: Well, the week after would be September 9, 2013 on a Monday.

Mr. Rapozo: Perfect, that is my anniversary.

Chair Hooser: Is that thirty (30) days?

Ms. Fountain-Tanigawa: That would be a little longer than thirty (30) days.

Chair Hooser: How much longer?

Mr. Rapozo: Five (5) days.

Ms. Fountain-Tanigawa: Two (2) working days longer.

Chair Hooser: I mean I do not care. Whatever you folks want to do.

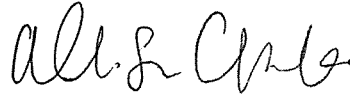
Ms. Nakamura: September 9, 2013.

Chair Hooser: Do you want to clarify the motion?

Upon motion duly made by Mr. Kagawa, seconded by Mr. Rapozo, and unanimously carried, Bill No. 2491 was deferred to September 9, 2013 at 9:00 a.m.

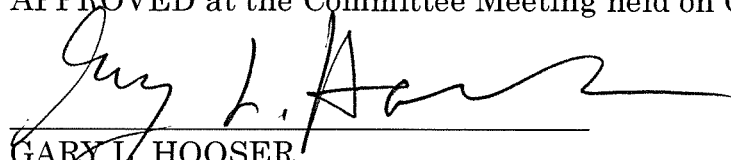
There being no further business, the meeting was adjourned at 6:48 p.m.

Respectfully submitted,



Allison S. Arakaki
Council Services Assistant I

APPROVED at the Committee Meeting held on October 2, 2013:



GARY L. HOOSER
CHAIR, EDR COMMITTEE